Ars transferendi Dominium.

The Second Part.

OR, A SURE

LAW-GUIDE

TO THE

Conveyancer,

Consisting

Of many *Observations* and various *Questions*, with their Resolutions;

Relating

To Feoffments, Grants, Fines, Common Recoveries, Exchanges, Releases, Confirmations, Attornments, Surrenders, Bargains and Sales, and Devises.

By JOHN BRIDALL *of* Lincolns Inn, *Barrister.*

Aristotle 1 Rhet. 5.
Proprietatis definitio est, ubi penes nos est Jus alienandi.

Coke *on* Littleton. *Sect.* 360,
Rerum Suarum quilibet est Moderator, & Arbiter.

LONDON,

Printed by the Assigns of *R.* and *E. Atkyns* Esquires; for Isaac Cleave, in *Chancery-Lane*, J. Hartley, and J. Deeve in *Holborn*, R. Smith without *Temple-Bar*, B. Parker in *Westminster-Hall.*

FH
MVSEVM
BRITANNICVM

A

Sure LAVV-GUIDE.

TO THE

CONVEYANCER.

Part II.

ACcording to the Municipal Laws of *England* Eſtates in, or out of Lands, may be conveyed by theſe following Means, : By *Feoffment*; By *Grant*; By *Fine*; By *Common Recovery*; By *Exchange*; By *Releaſe*; By *Confirmation*; By *a Grant of a Reverſion*, or *Remainder with Attornement*; By *Surrender*; By *Bargain and Sale*; And by *Deviſe*. Of theſe ſeveral ways, or means my purpoſe is to handle, in this Second Part of my *Law-Guide to the Conveyancer*; and that According as they are above by me Ranged; And Firſt, of the Firſt Conveyance, *viz.* By way of *Feoffment*.

The First Conveyance *by way of* Feoffment.

A *Feoffement*, according to my Lord *Verulam*, is, where by Deed Lands are given to one, and his Heirs, and Livery, and Seisin made, according to the Form and Effect of the Deed; If a lesser Estate than *Fee Simple* be given, and Livery, and Seisin made, it is not called a *Feoffment*, except the *Fee Simple* be Conveyed, but it is otherwise called a Lease for Life, or Gift in Tail, His Tract, Intituled, *The use of the Law*, *p.* 50. *pr.* 1639.

Mr. *Roger Coke* in his Elements of Power and Subjection, *Lib.* 1. *c.* 7. *Sect.* 9. gives this description of it; *Feoffement*, (says he) is derived of *Fædum*, a Fee, *quia est donatio Fædi*, and this is the most Ancient, and necessary Conveyance, which is used by the Common Law, (that is, that Law which concerns Tenants and Estates, used only here in *England*,) And this Deed, or Conveyance, is either of absolute Estates of Corporeal Inheritances, absolutely passed to another by Livery, and Seisin made according to the intent and purport of such *Feoffment* (he, which conveys such Estate of Inheritance, being called the Feoffor, he to whom such Inheritance is conveyed, is called the Feoffee,) or of absolute Estates of Inheritance, which are not Corporeal, as Advowsons, Commons, Rents issuing out of Lands, which do lie in Grant, and do not pass

paſs by Livery, and Seiſin, but by delivery of the Deed, or *Feoffment*.

As for Livery of Seiſin, that muſt always attend on a *Feoffment* (for *non valet donatio, niſi ſubſequatur Traditio* ;) *Bracton* and *Noy* Attorney General, do render theſe deſcriptions thereof.

The former expreſſeth himſelf in this manner; *Traditio eſt, de re Corporali, propria, vel aliena, de Perſona in Perſonam, de manu propria, vel aliena, ſicut procuratoria, dum tamen de voluntate Domini, in alterius manum gratuita Tranſlatio.* Lib. 2. c. 18. n. 2.

The latter ſpeaks thus; Livery of Seiſin, is a Ceremony uſed in Conveyance of Lands, that the Common People might know of the paſſing, or alteration of the Eſtate; And no Freehold (ſays he) will paſs without this Livery of Seiſin, except by way of Surrender, Partition, or Exchange, or by matter of Record, or by Teſtament. His Tract Intituled, *A Treatiſe of the Principal grounds of the Laws.* cap. 31.

I. *Observations.*

1. Where Baron and Feme, being *Ceſtuy que uſe, in jure uxoris*, make a Feoffment and the Husband dies, this *Feoffment* is not void *ab initio*, but is now determined, upon the Husband's Deceaſe; But a *Feoffment* by the Wife of her Joynture made by her firſt Husband in Poſſeſſion, or in uſe, is void by the Statute of 11 *H.* 7. *c.* 20. as to the Heir, but not *quoad omnes, Per ipſum*; but *Feoffments* made to great Perſons for Maintenance, are void by the Statute of 1 *R.* 2. *c.* 9. as to Strangers, but not betwixt the Feoffor and Feoffee, 27 *H.* 8. *c.* 23. *Br. Feoffments de Terres* 1.

2. Where a man is Outlawed in Treſpaſs, or other Action Perſonal, there the King is Intitled to the profits, but not Seiſed; therefore in that Caſe, the *Feoffment* of the party is good; otherwiſe where the King is Intituled by Office of Seiſure, for there the party cannot make a *Feffment* until after Livery had been ſued, 9 *H.* 6. 20.

3. A *Feoffment* made of a Houſe *cum pertinentijs*, nothing ſhall paſs by theſe words *cum pertinentijs*, but the Garden, Curtilage, and the Cloſe adjoyning to the Houſe, and upon which the Houſe is built, and no other Land, tho' other Land has been occupied with the Houſe. *Br. Feoffments de Terres* 53. 23 *H.* 8.

4. In the 32*d.* year of the Reign of *H.* 8. It was uſual to add theſe Words, *Ac omnia Terras & Tenementa, & Hereditamenta eidem Meſ-*

Meſſuagio Pertin. aut cum eodem occupat. locat. aut dimiſſ exiſten. And by this, the Land uſed with the Houſe paſſed. *Br. Feoffments c.* 53.

5. A *Feoffment* to the uſe of another for Term of Life, and after to the uſe of *I. S.* and his Heirs, there *Ceſtuy que uſe* in Remainder, or Reverſion, may ſell the remainder or reverſion in the Life of Tenant for Life; but he cannot make a *Feoffment*, till after his death, 25 *H.* 8. *Br. Feoffment al uſes* 44.

6. If a man of *non Sanæ memoriæ*, maketh a *Feoffment*, and a Letter of Attorney for to deliver Seiſin; which is done accordingly, and dies; yet the Feoffor dies Tenant to the Lord, and by this it appears, that the *Feoffment* is void by Attorney. 7 *H.* 4. 5.

7. If a Conuſor of a Statute Merchant enfeoff the Conuſee after Execution, this ſhall extinguiſh the Execution, notwithſtanding that the *Feoffment* be on condition, and the condition is broken, and the Coniſor re-entred. 46 *Ed.* 3. 30.

8. If four perſons joyn in a *Feoffment*, in Fee whereof three of thoſe perſons have nothing in the Land, this is notwithſtanding a good *Feoffment* in Law, 42 *Ed.* 3. 12.

9. A *Feoffment* in Fee to four men, and one of the four makes a Letter of Attorney to *I. N.* to receive Livery for himſelf and his Companions, which is accordingly executed, nothing paſſes but to him only, that made the Letter of Attorney. *Br. Feoffments de Terres* 67, and 72. 16 *E.* 4. 1.

10 A Leaſe of Land is made for Ten Years, and the Leſſee Leaſeth over to another for Four years, the Leſſor makes a *Feoffment* to a Stranger, by ſufferance of the Second Leſſee, this is a good *Feoffment*, without the Attornment of the Firſt Leſſee, 28 *H.* 8. *Br. Feoffments*, 68.

11. A *Feoffment* to the King by Deed, and Livery of Seiſin made, this cannot be good; Becauſe the King cannot take, but by matter of Record; but in caſe there be an Enrolment of the Deed, then it is good to the King without any Livery of Seiſin, for the King cannot take by Livery, 29 *H.* 8. *Br. Feoffments*, 69, and *Faits* enroll 16. with which concurrs the Authority of the Doctor and Student, who tells us, That the King's Excellency is ſo high in the Law, that no Freehold may be given to the King, nor be derived from him, but by matter of Record, *Lib.* 1 *c.* 8. *f.* 18. *b.*

12. A *Feoffment* is made in Fee to the Intent for performing of a Man's Will, this is no Condition, but a Declaration of the purpoſe and Will of the Feoffor, and the Heir at Law cannot make an Entry for *non* Performance, 31 *H.* 8. *Br.* Conditions, 191.

13. A man infeoffes two upon Condition that they ſhall infeoffe *VV. N.* before *Michaelmaſs-day*, and one of them dies, the other alone makes the *Feoffment*, this is good, 41 *Ed.* 3. 18.

14. Baron and Feme are Tenants in Tail, the Baron goes out of the Country, and the Wife makes a *Feoffment*, to *G.* and by the Court

Court this is a Diſſeizin to the Husband, and therefore a void *Feoffment*, 9 *Aſſ. pl.* 20.

15. A Man makes an abſolute Deed of *Feoffment*, and a Letter of Attorney to make Livery of Seiſin; upon condition, this is adjudged a Diſſeizin, 12 *Aſſ. pl.* 24.

16. A Father in good Health makes a Charter of *Feoffment* to his Younger Son, with a Letter of Attorney to Deliver Seiſin, and before Livery was Executed, the Father becomes Paralitick, and ſo proves Mute, and then the Attorney makes the Livery, and by all ſigns that a Man could perceive, he agreed to the Execution of the Livery, and Seiſin; and it was adjudged to be a good *Feoffment*; by which it ſeems the *Feoffment* of one, that is *Mutus*, and has reaſon of perceiving by ſigns, is good in Law, 25 *Aſſ. pl.* 4.

17 A Deed of *Feoffment* is made, and likewiſe a Letter of Attorney to make Livery of Seiſin abſolutely; and afterwards the Feoffor commands the Attorney, by Parol, or word of Mouth, to give Livery upon Condition which he did accordingly, and held good by *Thorpe*; But *Mowbray* ſaid, that Livery upon Condition, where the Deed is abſolute, is without warrant, 26 *Aſſ. pl.* 39.

18. A Diſſeiſor infeoffes the Diſſeiſee, and two others, all accrues to the Diſſeiſee, for his Entry was legal, and he is in his Remitter, before the Livery executed, and ſo the Livery void; otherwiſe it is, If the Entry had not been Lawful, 29 *Aſſ. pl.* 26.

19. Feme Sole, Seized in Fee, infeoffed *A.* and *B.* in Fee, upon Condition, to reinfeoff her, upon Requeſt, and then ſhe takes a Husband, and after ſhe requeſts *A.* and *B.* to make to her the Re-enfeoffment; *A.* refuſeth to do it, but *B.* makes it to Baron and Feme of the whole, and *A.* ouſts them, and they bring an Aſſiſe, and recover; for one Moyety of the *Feoffment* of *B.* is good; And for the other Moyety, the Entry is Lawful for the Condition broken, and ſo the Requeſt counted good, 31 *Aſſ. pl.* 25.

20. A *Feoffment* of Land, good by Deed, by the delivery of the ſame within view, ſo that the Feoffee enters accordingly. But in caſe the Feoffee dies before any Entry made by the Feoffee, the Land then deſcends to the Feoffors Heir, and the *Feoffment* ſhall not take effect. *Br. Feoffments de Terres* 70.

21. Baron and Feme joyn in a *Feoffment* of the Wives Land, rendring Rent, and the Husband dies, and the Feme takes a Second Husband, before any Rent day, and he accepts the Rent, the *Feoffment* is affirmed, forever. *Lord Bacon* his Elements of the Common Law, *Regula* 1. *p.* 5.

22. A Letter of Attorney is made to *I. S.* to deliver Livery and Seiſin in the Capital Meſſuage, and he doth it in another place of the Land; or between the Hours of two and three, and he does, after, or before; or if a Charter of *Feoffment* be made to *I. D.* and *I. B.* and expreſs the Seiſin to be delivered to *I. D.* and the Attorney delivers it to *I. B.* in all theſe Caſes aforeſaid, the Act of the Attorney,

torney, as to execute the Eſtate is void, 10 *H.* 7. 9. *b.* 16. *Eliz. Dyer* 337. 10 *H.* 7. 15. *b.* 11 *H.* 7. 13. *a.* 11 *Eliz. Dyer, f.* 283.

23. A Letter of Attorney is made to Three *Conjunctim, et Diviſim*, two cannot make Livery of Seiſin, 38 *H.* 8. *Dyer* 62 and 27 *H.* 8. 6. *b.*

24. A *Feoffment* is made with Warranty, and the Feoffee brings a *Warrantia Chartæ* againſt the Heir, who pleads *Riens per diſcent* at the time of the voucher, and it's found for the Tenant, the Plaintiff ſhall never after have execution of Lands, which after deſcend, for it is Peremptory for the demandant, *Leonard* 4. *pt. n.* 365.

25. A *Feoffment* made to *Margery*, and Livery of Seiſin made to *Margaret*, which is her true name, this is a good *Feoffment*, 1 *Rolls pt. f.* 230. *Butler* v. *Fincher.*

26. A *Feoffment* of one Coparcener of a Manor, made of the whole Manor, carries but a Moyety, *Bulſtrode* 1 *pt. f.* 4. *Proctor* v. *Johnſon.*

27. A Charter of *Feoffment* from a day to come, If Livery of Seiſin be made by the party, after the day, the Livery is good, *Palmer f.* 30. *Taylor* v. *Fiſher, and Greenwood.*

28. If Livery and Seiſin be made upon one Acre of Land in the name of two Acres, it is good for both Acres, for it is not neceſſary, that the Party, that gives the Livery, ſhould go to all the Lands, mentioned in the Deed of *Feoffment*, *Stiles's Rep.* 363. *Lockie* v. *Dumiloe.*

29. A *Feoffment* is made to divers, and Livery made to one of them, in the name of all, this is not good, without a Deed of *Feoffment*, 28 *H.* 8. *Dyer* 35 *a.*

30. A *Feoffment* made in Fee of two Acres, to two persons, *Habendum* one Acre to one, and the other Acre to the other, and this *Habendum* is void, *Noy* in his Rules, *p.* 13. *Reg.* 34.

31. A *Feoffment* to the Parson of *Dale* and his Successors in Fee, to the use of the Parishioners; this use both in Law, and Conscience is void, for that the Parishioners are not capable to take, 12 *H.* 7. 27. and *Crompton, f.* 62. *B. Tit. Chancery.*

32. A *Feoffment* in Fee is made to *I. S.* and the Feoffor delivers the Deed, upon the Land, this is a good *Feoffment*, and so adjudged by all the Justices of the Common Pleas, *Br. Feoffments* 74.

33. A man Seised of a Manor, to which an Advowson is appendant, and a *Feoffment* is made, and the Estate not executed, the Advowson passes not, *Savil's Reports, f.* 63. *n.* 134.

34. Lessee for Life, the Remainder in Tail, the Remainder in Fee, Lessee for Life makes a Deed of *Feoffment* of the Land, and delivers it, and makes a Letter of Atturney to *A.* to deliver Seisin, who enters, and makes Livery accordingly; Adjudged, that the Attorney is a Disseisor, *Leonard* 4 *pt. n.* 29. *King and Cotton's Case.*

II. Queſtions *with their* Reſolutions.

1. *Whether the word* [Dedi] *in a Feoffment can amount to a Warranty?*

Queſtion.

A Queſtion was in the Court of Common-Pleas; a Man makes a Feoffment in Fee by theſe Words [*Dedi & Conceſſi,*] If the Feoffee makes a Feoffment over, whether the Aſſignee may vouch, by reaſon of this word [*Dedi*] made to his Feoffor, and it was debated among the Juſtices, and their opinion was that the ſecond Feoffee may vouch, or have a *Warrantia Chartæ*, *Daliſons Rep. f.* 101 *pl.* 35.

Solution.

2. *Whether Charters do paſs by a Feoffment made of the Land?*

Q.

It was ſaid by *Frowic* in a writ of Detinue, and agreed to, by all the Juſtices of the Court, that where a Feoffment is made, no Evidence paſſes to the Feoffee, but only the Deed of Feoffment it ſelf; and it was alſo ſaid in the ſame Plea, that if I deliver Charters, touching my Land, to re-deliver them to me and my Heirs, and afterward I alien my Land, yet the Bailee ſhall be liable to reſtore them to me, and my Heirs, *Kelwey*'s *Rep. f.* 48 *pl.* 3.

S.

3. *In what Caſe a Condition, upon a Feoffment, can be performed to an Aſſignee, and not to the Heir?*

Q

By *Popham* and *Clench*; If a Feoffment be to one upon Condition of Payment of Money, to the Feoffee his Heirs or Aſſigns, and the Feoffee makes a Feoffment over and Dies,

S.

Dies, the Money ought to be paid to the Feoffee, who is the Aſſignee, and not to the Heir; for the Heir is not named, but in reſpect of the Inheritance, which might be in him, but here he is named, as a meer Stranger to it, *Popham's Rep. f.* 100. *Goodale* v. *Wyat.*

Q. 4. *A Feoffment is made to ſuch a one as* I. D. *ſhall name, within ſuch a time, and* I. S. *is named by* I. D. *whether before the Feoffment, and within the time* I. D. *can recall his nomination and naming again?*

S. A Feoffment is made to ſuch a one as *I. D.* ſhall nominate within a Year, and *I. D.* names *I. S.* yet before the Feoffment, and within the year *I. D.* may Countermand his Nomination, and name again, becauſe no Intereſt paſſes out of him; but if I Enfeoff *I. S.* to the uſe of ſuch a One, as *I. D.* ſhall nominate within a Year, then if *I. D.* name *I. G.* this ſhall not be revocable, becauſe the uſe paſſeth preſently by operation of Law, 14 *E.* 4. 2. And this is according to the Lord *Bacon's* Rule; *Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari poteſt, ſi autem pendet ex voluntate tertiæ perſonæ, vel ex contingenti, non poteſt.*

Elements of the Common Law, *Regula* 20.

Q. 5. *Whether a Feoffment of Lands without Livery, and within the view, and lying in another County, be good, or not?*

S. *I. S.* made a Deed of Feoffment to *A.* whom he intended to Marry, and at the Church door, before the Marriage Solemnized, he firſt delivers the Deed to *A.* and ſhews her the Land, and Says, that it is his Will and Pleaſure, that ſhe ſhould have the ſame

ſame Lands, *Secundum Formam Chartæ*, which Lands were out of the County; and *A.* takes the Deed and then they are Married and ſhe enters, and the Husband does not at any time diſagree, neither claim any thing, *niſi in jure uxoris*, the Wife dies, and the Husband Marries *K.* and deviſes the Land to *K.* and dies, and the Heir of *A.* enter, and *K.* ouſts him, and then he brings an Aſſize, and recovers by Judgment; For that the Feoffment without Livery within the view, although it lies in another County, is good, if the Feoffee enter; and becauſe the Husband did never diſagree, therefore good; yet it ſeems, that it would not be good, If there be neither a Deed of it, nor a Livery, 38 *E.* 3. 11. Q.

6. *Whether Livery to one Feoffee ſhall ſerve for all, upon a Feoffment of Lands?* S.

A man infeoffs four men by Deed, and makes Livery of Seizin to one of them in the name of all; this is a good Feoffment to all of them; but if a man infeoff four without Deed, and makes Livery of Seiſin to one of them, in the name of all, there nothing veſts, but in him that took by the Livery, 15 *E.* 4. 18. Q.

7. *A Man Leaſeth his Lands for Term of Years, and after thereof makes a Feoffment to* I. N. *and ſends* W. P. *to make Livery of Seiſin, who comes upon the Lands, and continues there all Night. But the Wife of the Leſſee for years is not outed, nor the Leſſee ever paid Rent to the Feoffee, but to the Feoffor all his Life, whether this be ſuch a Feoffment as ſhall paſs the Lands to the Feoffee?*

Is

S. It was adjudged, that in this Case there was neither Livery, nor Attorney, and therefore no good Feoffment, 5 *Ass. pl.* 11.

Q. 8. *Whether a Letter of Attorney to make Livery of Seisin, after his Death, can be good?*

S. Upon a Verdict in an Assise, it was found, that *W.* was seised in Fee and did infeoffe, *I.* by Deed, who made a Feoffment to *W.* again, and a Letter of Attorney to deliver Seisin, after his Death, and the Attorney made Livery to *W.* in the life-time of *I.* contrary to the warrant, and *I.* continued in the House with *W.* and after *W.* makes a Feoffment over, by the consent of *I.* and after this same *I.* agrees to it also, and then *I.* enters contrary to his own agreement, and his Entry held to be good, and that by the opinion of the Justices, for the Feoffment by *I.* by the delivery of the Attorney, contrary to his Warrant, is void, and 'tis a disseizin, and the Second Feoffment made by *W.* is void also notwithstanding the Agreement and Assent of *I.* And so we may see the Warrant of Attorney to make Livery after his death is void to all Intents, for he cannot make Livery by it in his Life time, nor after his Death, 40 *Ass. pl.* 38.

Q. 9. *A. Seized of two Acres, one in Fee, and the other for Life, Infeoffes I. S. of both Acres, and Livery is Executed in the Fee Simple Acre in the name of both, whether this be a good Livery of Seisin, or not?*

S. A man is Seised of two Acres of Land, the one in Fee Simple, and the other for term of Life; if he makes a Feoffment of both these Acres, and makes Livery of Seisin in the Acre of

of the Feesimple Land, in the name of both Acres, this is adjudged to be a good Livery of Seisin, and shall pass both Acres. *Sed e contra*, if a Man has two Acres, one in Fee, the other for years, and makes Livery in the Fee Simple Acre, in the name of both, the Acre for years passes not, 9 *H.* 7. 25. S.

10. *Whether there can be a good Feoffment, without any Livery, or Entry?*

If a man makes a Charter of Feoffment, and stands afar off, and shews to the Feoffee the Lands afar off, which are Comprised in the Charter, and delivers to him the Charter and willeth him to enter, and the Feoffee sees the Lands, and receives the Charter, and agrees to it, and does not dare, for doubt of death to enter, this is a sufficient Possession to have an Assise, and so a good Feoffment, without Livery, or Entry, 38 *Ass. pl.* 23. Q. S

11. *Livery of Seisin of one Acre, in use in the name of other Acres, whether good?*

A Man seized of three Acres of Land in one County, in Fee, infeoffes *A.* of one of those Acres in Fee, to the use of the Feoffor in Fee, and of the Second Acre he infeoffs *B.* in Fee to the same use; and of the third Acre, infeoffs *C.* to the same and after *Cestuy que use*, in the same year, by Deed infeoffs certain other persons of the same three Acres, and makes a Letter of Attorney in the same deed to one *D.* to deliver Seisin of these three Acres, to the Feoffees; the Attorney enters into one of the three Acres only, and there he delivers Seisin to the said Feoffees in the name of all the three Acres; in this Case after much Arguing at the Bar, and Bench, it Q. S.

was

was adjudged, that the Livery and Feoffment was good, and that all the Acres did pass, *Pasch.* 25 *H.* 8. A Case reported by *Bendloe*, Sergeant at Law.

12. *Whether a Letter of Attorney for the delivery of Seisin without a Deed of Feoffment can be good in Law?*

Q. *Anno* 18 *H.* 7. At the Assizes holden in *Cambridg*, *Frowick* declared for clear Law, that a Letter of Attorney to deliver Possession, without a Deed of Feoffment is void in

S. Law, *Kelweys Rep f.* 51. *a.*

13. *A. Copyholder in Tail, according to the Custom, accepts of a Feoffment, whether this shall work any destruction of the Copihold in Tail?*

It was held, That if a Copiholder doth

Q. accept of a Feoffment from the Lord of the Copihold Manor, it destroys not the Copyhold, so as to conclude his Issue, *Carter's Rep.*

S. *f.* 6, 7. *Taylor* v. *Shaw.*

14. *If a Letter of Attorny be made to enter into all, or any part of the Lands, in the name of the whole, and to make Livery of Seisin, whether this Attorney may enter into any Part, though in the Possession of several Tenants, and make the*

Q. *Livery severally?*

In an Ejectment of Lands in *Sutton* Marsh in the County of *Lincoln*, upon a Controverted Title, between the Lord *Dacres* and the Duke of *Richmond*, it was held by *Hale*,

S. Chief Baron, and the whole Court, that if a Letter of Attorney be made to enter into all or any part of Lands, in the name of the whole, and to make Livery of Seisin, that the Attorney may enter into any part, tho' in the possession of several Tenants, and

make

make Livery, ſeverally of the ſeveral Tenants apart, that he enters into the poſſeſſion of. *Hardreſs's Rep. f.* 314. *Friend* v. *Drury*, and others.

15. *Whether by Livery and Seiſin made of one Houſe, other Houſes ſhall paſs?* Q.

If a man be Seiſed of a Houſe, and ſome other Houſes, and makes a Leaſe for Years of the other Houſes, and after the Leſſor makes a Charter of Feoffment of all the Houſes, and makes Livery in the Houſe of which he is Seiſed, and not in the other Houſes, that nothing in the other Tenements paſſeth; but if he had made a Leaſe at Will, otherwiſe it had been, *Daliſon's Rep. f.* 46. *pl.* 1. S.

16. *Leſſee for Life, The Remainder in Fee to* I. S. *who makes a Feoffment, and Letter of Attorney to deliver Seiſin, which is Executed accordingly, whether this ſame Remainder paſſes thereby.* Q.

By *Catlin* and *Bromley* it was held, That if there be Land for Life, the remainder in Fee; He in the Remainder makes a Deed of Feoffment, and a Letter of Attorney to deliver Seiſin, and the Attorney enters, and makes Livery accordingly, yet the Remainder paſſeth not thereby; for the Attorney by his Entry makes a Diſſeiſin, and ſo plucks the Fee and Freehold out of both before Livery; But if he in the Remainder himſelf enters and make a Feoffment, then the Remainder paſſeth, otherwiſe not. *Daliſon's Rep. f.* 113. *pl.* 4. S.

Q. 17. *Livery of Seisin made before Enrolment, whether it shall vest the Estate by Livery, and prevent the operation of the Inrolment.*

S. A man bargains and sells his Lands, by Deed indented, to be inrolled, and before Inrolment, he makes Livery to the Bargainee, and afterwards the Indenture was inrolled, the Livery prevents the operation of the Inrolment, and the party shall be Counted in, by the Livery, and not by the Bargain and Sale, for Livery is more worth, and more worthy Ceremony to pass Estates, and therefore shall be preserved. *Leonard* 1 *pt. n.* 10. *Stoneley and Bracebridg's Case, vide infra Qu.* 27.

Q. 18. *A man makes a Feoffment to the use of his last Will, whether any thing passes by Will, or by the Feoffment?*

S. One doth Covenant to stand Seised to the use of his last Will, or makes a Feoffment in Fee to the use of his last Will; It was held that nothing passes by the Will, but by the Feoffment; And *Fleming* Justice said, that when a man makes a Feoffment to the use of his last Will, he himself hath the use in the mean time, and may limit Estates according to the power reserved to him upon the Feoffment, and upon the limitation the Estates shall take effect by force of the Feoffment, and the use is directed by the Will; so that in such a Case, the Will is but only directory, *Bulstrode* 1 *pt. f.* 200. *Semaine Plaintiff against ----Defendant.*

Q. 19. *One was produced as a Witness to prove Livery of Seisin upon a Feoffment, and having an Estate at Will, in part of the Land, whether he*

he be a good Witneſs, or not, to prove the Livery and Seiſin?

A Feoffment was made to the uſe of *I. S.* and two Witneſſes were Subſcribed to prove the Livery of Seiſin; afterward one of theſe Witneſſes had an Eſtate at Will, made unto him of part of this Land, and he being produced to witneſs the Execution of the Feoffment by Livery and Seiſin, was excepted againſt, becauſe he was a party interreſſed in part of the Land, and ſo his Oath was to make his own Eſtate good; But notwithſtanding this Exception was diſallowed by the whole Court and that he might well be Sworn as a Lawful Witneſs to prove the Executing of a Feoffment by Livery and Seiſin; this being in Affirmance of the Feoffment, and accordingly by the Rule of the Court, he was Sworn, and his Teſtimony received, and allowed of. *Bulſtrode. 1. pt. f. 202.* S.

20. *A man ſeiſed of Lands in Fee, makes a Leaſe for years, and after infeoffs* B. *with a Letter of Attorney to the Leſſee, and* C. D. Conjunctim & diviſim, *&c. to make Livery of Seiſin, the Leſſee makes Livery in one part of the Land, and* C. *in another part, and* D. *by himſelf in another part; whether theſe ſeveral Liveries were good.* Q.

A. was ſeiſed of certain Land and Leaſed the ſame for years, and afterwards made a Deed of Feoffment unto *B.* and a Letter of Attorney to the Leſſee, *C.* and *D. Conjunctim & diviſim in omnia ſingula terras, et Tenementa intrare, & Seiſinam inde*, &c. *Secundum formam Chartæ*, &c. Leſſee for years by himſelf, makes Livery and Seiſin in one part of the S.

Land, and *C.* in another part, and *D.* by himſelf in another part: It was firſt agreed by the Juſtices, that by that Livery by Leſſee for years his Intereſt and Term is not determined, for whatſoever he doth, he does it as an Officer, or Servant to the Leſſor. Secondly it was agreed, that theſe ſeveral Liveries, were good, and warranted by the Letter of Attorney, eſpecially by reaſon of theſe words, *In omnia & ſingula*, &c. ſo as all of them, and every of them, might enter and make Livery in any part, or every Part; And ſo it was adjudged, *Leonard* 1 *pt. n.* 276. *Petty and Trevelian's Caſe.*

Q. 21. *A Feoffment is made of a Houſe, and the Deed thereof delivered in the Houſe, without any other Circumſtance, whether this can amount to a Livery of Seiſin?*

S. It was holden by the Court that if a Feoffment be made of a Houſe, and the Deed be delivered in the Houſe, without other Circumſtances, the ſame doth not amount to a Livery of Seiſin; but if he do any Act, by which the Intent of the Feoffor appeareth, that the Feoffee ſhould have Livery and Seiſin; as if the Parties go of purpoſe to the place intended to paſs, to the intent that the Deed may be deliverd in that kind, the ſame doth amount to a Livery, by *Anderſon* and the whole Court, *Leonard* 1 *pt. n.* 287. *Wills and Snowball's Caſe.*

Q. 22. *A Feme Covert makes a Charter of Feoffment, and then becoming Sole, or diſcovert, makes Livery of Seiſin* Secundum formam Chartæ, *whether this Livery be void, or not?*

There

There is a Diverſity, when Livery is made generally, and when eſpecially, *Secundum formam Chartæ*; For when there is a ſpecial Livery *Secundum formam Chartæ*, if the Charter be void in its Fabrick, nothing paſſes by the Livery; for if this Eſtate paſſes by the Livery only, this ſhall not bind the Wife: And if a Monk, or Feme Covert make a Charter of Feoffment, after they become Sole, or diſcovert and make Livery *Secundum formam Chartæ*, this Livery is void; and if it paſs by Deed, it is void, and Aſſent of the Feme, or Acceptance of Rent upon a void deed, ſhall not bind her; as a Feoffment to *J. S. Habendum* to him, and *J. N.* if Livery be made *Secundum formam Chartæ*, this is void; becauſe a ſpecial Feoffment to one, and his Heirs, *Habendum* for Life, and Livery *Secundum formam Chartæ*, a Fee paſſes, and the *Habendum* is void, and if Livery be made, without relation to the Deed, for life only, it is good, *Palmer's Rep. f.* 31. *Tyler* v. *Fiſher and Greenwood.* S.

23. *A Feoffment in Fee*, ea Intentione, *that the Wife of the Feoffor ſhould have the Land for Life, the remainder to his younger Son in Fee, whether this be a condition, or an Eſtate executed?* Q.

A man made a Feoffment in Fee, *ſub Conditionem, ea Intentione*, that his Wife ſhould have the Land for her life, the Remainder to his younger Son in Fee; the Feoffer died without making ſuch an Eſtate; the Heir of the Feoffor entred; it was reſolved that it was not a Condition but an Eſtate, which S.

was executed presently, according to the intent, *Leonard* 4 *pt. n.* 3.

Q. 24. *A Lease is made to* B. *for years, the remainder to the Heirs of* B. *and Livery is made whether this be a good Remainder?*

S. It was held by *Dyer* and *Manwood*, that if a Lease be made to *B.* for years, the remainder to the right Heirs of the said *B.* and Livery of Seisin is made, that the remainder is void; because there is not any Person in *Esse*, who can take presently by the Livery; and every Livery ought to have its operation presently; but where a Lease is made to *B.* for life, the remainder to his right Heirs, there he has a Fee Executed, and it shall not be in abeyance, for there he takes the Freehold by the Livery, *Leonard* 4 *pt. n.* 67.

Q. 25. *A man has two Lessees for years, by several Leases of Lands in one County, and makes a Feoffment of all his Land within the same County, and makes Livery upon the Land of one of the Lessees, outing him, in the name of all, whether any thing of the other Lease shall pass?*

S. It was adjudged, that nothing of the other Lease passes by the Feoffment, because the other Lessee has an Interest, and remained on the Land; but of a Tenant at will, it is otherwise; for there both Lands pass, for this is a determination of his will, 28. *H.* 8. *Dyer. f.* 18. *a, b.*

Q. 26. *A man seised of a House, and of a Close, adjoining to the House, makes a Lease of the House for Term of years, or life; and then makes a Feoffment of the House, and Close, and delivers Seisin in the House, (the Termor, being at market, and his Wife*

Wife and Children, remaining in the Houſe) in the name of all; whether the Houſe paſſes or not?

It was held, that nothing paſſes, for that the continuance of the Wife and Children of the Leſſee, preſerved and continued the Right, and poſſeſſion of the Leſſee, 18 *H.* 8. *Dyer* 18. *b. pl.* 107. S.

27. *A Bargain and Sale, and thereupon Livery of Seiſin, whether a perfect Feoffment?* Q.

A. D. made a Leaſe of Lands for years and after by Deed indented, bargains and ſells the Land to another, and his Heirs, and the Deed not being inrolled, *A. D.* delivers Seiſin of the Land, *Secundum formam Chartæ, indentatæ prædict.* And if this was a good Feoffment, or not, was the Queſtion in the Court of Wards, and the opinion of the two chief Juſtices was, that it was a good Feoffment, *Anderſon* 2 *pt. n.* 51. *f.* 68. *vide Supra Qu.* 17. S.

28. *A Feoffment is made to the Son and Heir apparent, but no uſe expreſſed, nor conſideration, Whether it ſhall be to the uſe of the Son?* Q.

If one infe off his Son, and Heir apparent, and no uſe is expreſſed, nor conſideration; It was ſaid at the Bar, that it ſhould be to the uſe of the Son, and ſo hath the Law been taken; and ſo it is, in the caſe of a Covenant to ſtand ſeiſed to the uſe of his Son; but the Court ſaid, that there was a difference between the Caſes, for in the Caſe of a Feoffment, they ſeemed to be of opinion, that the Deed ſhould have no operation, but in the other Caſe, it may be otherwiſe, upon Conſtruction of the Reſult of the uſe to the Father, *Leonard* 4 *pt. n.* 218. *Hodges's Caſe.* S.

Q. 29. *A man makes a Feoffment to two persons upon Condition, that the Feoffees before such a day shall make again an Estate to the Feoffor for Term of his Life, the remainder over in Fee to a Stranger, one of the Feoffees makes the Estate accordingly, whether it be good for the moyety seeing the condition is entire?*

S. It seemed to many of the Lawyers, that it was good for a Moyety, for that the Party to the Condition has dispensed with it, by his own acceptance of the Estate, *6 E. 6. Dyer* 69. *b.* 70 *a.*

S. 30. *If Land be to pass in possession, by Estate executed what things be requisite?*

Popham said, where Land is to pass in Possession, by Estate executed, two things are requisite; the one, the grant of the said Land; the other, the Livery to be made thereupon; For by the bare Grant, or Feoffment, without Livery, it doth not pass, as by way of making an Estate; And this is the reason why such Solemnity has been used in Liveries (to wit,) if it were of a Messuage, to have the People out of it, and then to give Seisin to the party, by the Ring of the door of the House, and of Land by a Turf and a Twig, and the like, which may be notorious; yet he agrees, It shall be a good Livery to say to the party, *Here is the Land, enter into it, and take it to you, and your Heirs for Ever, or for Life, or in Tail, as the Case is*; And albeit Livery by the view, may be made in such manner, yet by the Sealing of the Deed of Grant, upon the Land, or by Grant of it, upon the Land without Livery, nothing passeth but at Will: But if thereupon one

party

party ſaith to the other, after the Grant, or upon it; *Here is the Land, enter upon it, and take it according to the Grant*, this is a good Livery; but he ought to ſay this, or ſomething which amounts to ſo much, or otherwiſe it ſhall paſs by the bare Grant of the Land, altho' it be made upon the Land, *Popham Rep. f.* 49. *Collard* v. *Collard.*

31. *Whether there be any difference betwixt a Feoffment in Fee to uſes, and a Covenant to ſtand ſeiſed to uſes?* Q.

It is anſwered, that there is a difference taken between a Feoffment in Fee to an uſe, and a Covenant to ſtand Seiſed to it; for if a Feoffment in Fee be, and the uſe limited to a perſon incapable to take, the Remainder over, nothing returns to the Feoffor; But in a Covenant to ſtand Seiſed, it is otherwiſe, as in *Paget*'s Caſe put in the Caſe of the Rector of *Chedington*; ſo if a Feoffment in Fee be, to the uſe of one for life, the Remainder over, the Leſſee for life refuſes, the other ſhall take, but otherwiſe in an Eſtate upon a Covenant, *Littleton Rep. f.* 262. *Beckes*'s *Caſe.* S.

32. *Tenant for Life infeoffs* I. S. *of White Acre, of which he was Seiſed for life, with a Letter of Attorney to give Livery of Seiſin, but before the Execution thereof, the Tenant for Life purchaſeth the Fee and Livery is made, whether all paſſes.* Q.

Tenant for life made a Feoffment of White Acre, of which he was ſeiſed for life, and made a Letter of Attorney to deliver Seiſin, *Secundum formam Chartæ*; before Livery the Tenant purchaſed the Fee, and afterwards S.

wards Livery of Seiſin was made; it was reſolved by the Court; that all paſſed; But if the Feoffment had been of all his Lands in *Dale*, and the Letter of Attorney accordingly, and before livery made the Feoffee had many Lands there, if he purchaſed one Acre after, the livery ſhould not extend to that Acre, becauſe the Authority was Satisfied by the other Acre, *Leonard* 3 *pt. n.* 112.

Q. 33. *In what Caſes Livery of Seiſin ſhall be effectual, and in what not?*

S. A man makes a leaſe for Years of a Houſe, the leſſor makes a Feoffment to a Stranger, and comes to make livery, the Wife of the Leſſee (in his abſence) being there within, the leſſor enters, and by force extrudes the Wife againſt her Will to the Backſide, which was part of the Land leaſed, and livery in the Houſe was made, in the name of all the land, and becauſe the Wife always remained on the land, and contradicted the livery, the livery was void; but if ſhe had gone out of the Houſe by agreement, although ſhe had remained upon ſome other part of the land, the livery had been good; and if the leſſor had extruded her by force, and againſt her Will into the High-ſtreet, ſo that ſhe had not been, upon any part of the land at the time of the livery, then the livery had been good by *Harpur*, *Manwood*, and *Mounſon* (abſent *Dyer*) in the Star-Chamber, *Daliſon*'s *Rep. f.* 94 *pl.* 18.

Q. 34. *Tenant for Life, the remainder to his eldeſt Son, and his Heirs, joyn in a Leaſe, reſerving Rent to Tenant for life, and his Heirs, whether*

whether this Rent be determined by his death, or not?

Upon a verdict at Bar in Evidence the Case was such; Sir *G. H.* made a Feoffment to the use of himself for life; remainder to *W. H.* his Son, and Heir apparent, and his Heirs; Sir *G. H.* and *W. H.* his Son joyn in a lease for Years, rendring Rent to Sir *G. H.* his Heirs and Assigns; Sir *G. H.* dies; and it was resolved that the reservation, and the Rent is determined; for *W. H.* is not as Heir, and therefore he cannot have the Rent, *Palmer's Rep. f.* 485. *Huntley's Case.* S.

35. *Lord and Tenant, the Tenant holds by three pence, three Acres of Land, the Tenant infeoffs the Lord in Fee of one of those Acres, whether the Signiory be extinct for part, or in the whole?* Q.

Lord and Tenant, the Tenant doth hold by three pence, three Acres of Land, the Tenant makes a Feoffment in Fee, to his Lord, of one of those Acres, the Signiory is extinct for a third part, and remains for the other two parts; but if the Tenant had leased to the Lord an Acre for years, there the Signiory is suspended in all, during the Term, for a Signiory may be extinct in part, but cannot be suspended in part, but for the whole, *Br.* Extinguishment 48. S.

36. *If a man be seised of an Acre of Land in Fee, and* I. S. *is Seised to his use in Fee of another Acre, and he makes a Feoffment of both Acres, and Livery of the Acre, that he has in possession, whether by this Livery the Acre in use shall Pass.* Q.

It

S. It was adjudged that the Acre in uſe paſſed not; Although Livery be made in one Acre in the name of both; for this is not his Acre, but the Acre of the Feoffee; and the Statute of 1 *R.* 3. *c.* 4. ſaith, that their Feoffment ſhall be good; but there can be no good Feoffment, unleſs livery be made upon the Land it ſelf, 37 *H.* 8. *Br.* Feoffments 77 and Feoffmens *al uſes.* 55.

Q 37. *A Reverſioner upon a Term for years, grants the Reverſion to his Leſſee for years, by* Dedi, Conceſſi & Feoffavi, *with a Letter of Attorney to Execute Livery of Seiſin; whether the Grantee can take by the Livery or not?*

S. It was held by *Wray* and *Catlin*, that if he in Reverſion upon a Leaſe for years, grants his Reverſion to his Leſſee for years, by the words of *Dedi, Conceſſi, & Feoffavi*, and a letter of Attorney is made, to make livery of Seiſin, the Grantee cannot take by the Livery, for that the Leſſee hath the Reverſion preſently in him, *Leonard* 3 *pt. n.* 39.

The Second Conveyance *by way of* Grant.

A Grant ſignifieth Permiſſion, Sufferance, Leave, Licence, Yielding, or giving over of a thing, but eſpecially taken, It ſignifieth a Conveyance of Eſtates, which are not Corporeal, as Advowſons, Commons, Rents iſſuing out of the Land, which lying in Grant, do not paſs by Livery and Seiſin, but by the delivery of the Deed or Charter it ſelf.

I. *Obſervations.*

1. If a man grant Common, *Ubicunque Averia ſua ierint*, and after Manureth one Hundred Acres of Land, and then he falls into Poverty, ſo that he has no Cattle, yet the Grantee ſhall have Common in the ſame Hundred Acres; but if a Man grants to me Common, *Quandocunque Averia ſua ierint*, and after he has no Cattle, there the Grantee ſhall not have Common; If a Man grant Common throughout all his Manor, the Grantee ſhall not have Common in the Grantor's Land Sown, nor in his Garden; and if it be for Cattle to be fed in *Dale*, yet he cannot Common there, but with Cattle Commonable; And if a man grant Common *Ubicunque averia ſua ierint*, and after he put his own Cattle in his Garden, the Grantee

Grantee ſhall have Common in the ſame Garden, 9 *H.* 6. 36.

2. A Man grants his Signiory or Lordſhip to one for term of Life, the remainder over in Fee by Fine, and the Tenant for Life dies, and the Tenant attorns to him in remainder, this is good, for the Services paſs before, by the Fine; but it is otherwiſe upon a Grant by Deed, for there if it veſts not in the Grantee for Life, the remainder cannot take effect; 20 *H.* 6. 7.

3. If a man grant, or deviſe *Omnia terras, & tenementa ſua*, by this word Tenement, a reverſion well paſſes, 34 *H.* 6. 6.

4. A Man grants a Lordſhip, or a Rent Charge, iſſuing out of Land to the Tenant of the Land, and to another, and the Tenant accepts the Deed, this is a good Agreement and Attornement, and the Grant takes effect for one Moiety by way of Extinguiſhment; and by Grant, of the other Moiety, 34 *H.* 6. 41.

5. If a Man grants *Totam terram*, which *N. P.* holds in Dower, the reverſion ſhall paſs, by ſuch a form of Grant, 38. *E.* 3. 26.

6. A man leaſes his Manor, or Houſe for Term of life, and after grants, *Totum maneriu ſuum*, or *Meſſuagium ſuum*, this is void, for it is the reverſion of the Leſſor, and the Manor, or Houſe of the Leſſee, during his Term, and an Attornment ſhall not aid it, where the Grant is void; but if he had granted his *Intereſſe* in the Manor, or Houſe, this had been good, *Br.* Grants 154. 30. 177.

7. A Grant of Tithes it not good without Deed, otherwiſe of the Parſonage with the Tithes to it appertaining, and the reaſon appears by the Glebe, for that lies in Livery, and therefore may paſs for years without Deed, 19 *H.* 8. 12.

8. If a man gives, or grants all his Muniments, all Charters, Releaſes, and other Evidences ſhall paſs, and if a man grant all his Deeds, there all Charters, Releaſes, and Letters of Attorney ſhall paſs 35 *H.* 6. 37.

9. If a Debtor grants to his Creditor, to levy his Debt upon his Land in *D.* yet he cannot levy it, 41 *E.* 3. 7.

10. A man Leaſeth his Land, rendring 20 *l.* Rent *per Annum*, and grants the Reverſion, and the Tenant atturns, the Rent ſhall paſs, 41 *E.* 3. 16.

11. A man has a Manor in the County of *N.* and Land is holden of this ſaid Manor, lying in the County of *S.* by Grant of the Manor *cum pertinentijs* by Fine *in Comit N.* the Services of the Land in the other County ſhall paſs; and the Livery of a Manor in one County, makes the Services of the Land in the other County to paſs, 21 *E.* 3. 18.

12. A man Grants *omnia Bona, & Catalla ſua*, by this Charters of Land ſhall not paſs, for they are of the Inheritance, which ought to go always to the Heir, 4 *H.* 7. 10.

13. A reverſion deſcending to a Feme Covert, her Husband grants the reverſion to *I. N.* and the Tenant for Life attorns to him, and after the Husband dies, Living the Wife, and Tenant for Life, the Grant is void; for that

that it is not Executed in the Life of the Husband, and he had nothing but in the Right his Wife, 10 *E.* 4. 8.

14. A Deed is made to a man by these Words, *Dedi, Concessi, & Confirmavi*, the Grantee may use them that way, that shall make most for his Benefit, *viz.* by way of *Grant*, by way of *Feoffment*, or by way of *Confirmation*, 14 *H.* 4. 38.

15. A Court Baron is incident to a Manor and a Court, of Pipowders to a Fair, and therefore the Lord of a Manor, or of a Fair, cannot grant over the Court Baron, nor the Court of Pipowders, and reserve to himself those Courts, because they are incidents inseparable, 19 *H.* 8. *Br. Incidents* 34.

16. A man grants *Proximam præsentationem*, and has a Wife, and dies, the Grantee shall have the first Presentation, the Heir, the second, and the Wife for dower, the third, 33 *H.* 8. *Br. presentation al Esglise.* 55 *vide* 20 *H.* 8. 13.

17. A man gives or grants, *omnia terras & tenementa sua* in *D.* by this Grant Leases for years pass not, for these words *Terras & Tenementa*, shall be intended Freehold at least, 37 *H.* 8. *Br. Done*, 41. *and Br. Grants* 155.

18. A man grants a Lease for years, *Habendum post dimissionem inde factam* to *I. N.* and in truth *I. N.* had no such Lease, there the Lease shall commence presently, 3 *E.* 6. *Br. Leases* 62.

19. Two Joyntenants are, and one of them grants a Lease to begin after his Death, this is good; But if he grant it, upon a Contingent

gent precedent, and dies, before it happens, this Grant ſhall never take Effect, *Rolls* 1 *pt. f.* 253. *Simpſon* v. *Southwood.*

20. A man Leaſeth for Life, and Grants over, that after his Death the Land *redibit*, ſhall return to a ſtranger, this is a good remainder, and ſo a Remainder may be granted by the name of a Reverſion, and a Reverſion by the name of a Remainder, *Rolls* 1 *pt. f.* 319. *Blandford* v. *Blandford.*

21. Leſſee for years upon Condition, grants part of his Term to *A.* and part to *B.* and the Leſſor Grants the Reverſion, this deſtroyeth not the Condition, for the Apportionment is the Act of the Leſſee, *Palmer's Rep.* 382. *Wiſeman* v. *Denham.*

22. In an Extent, the Conuſee takes a Leaſe for years, and grants it over, a puny, or latter Statute, may be extended, *Palmers' Rep.* 274. *Harrington* v. *Garraway.*

23. Tenant in Tail of a Manor, to which an Advowſon is appendant, the Church being full, grants *Proximam Advocationem*, and then dies, by his Death, this grant is meerly void, *Bulſtrode* 1 *pt. f.* 35. *Walter* v. *Bould.*

24. Lands are granted by the King to a Corporation, by another name than that, by which they were named before, yet the Land ſhall paſs, and the Letters Patents ſhall be to them, as a new Incorporation, *Leonard* 4 *pt. n.* 99. The Dean and Chapter of Chriſts Church, and *Parot's Caſe.*

25. A man grants an annual Rent out of Land, wherein he hath no kind of Intereſt, yet this is a good Annuity to Charge the

perſon of the Grantor, in a Writ of Annuity *Owen's Rep. f.* 3. *vide* 4 H. 4. 29. *a.*

26. Leſſee for years grants ſo much of his Term as ſhall be to come at the time of his Death, it is a void grant, *Raymond's Rep. f.* 27. *Capenhurſt* v. *Capenhurſt. vid. Supra Obſerv.* 19.

27. A Reverſioner, Expectant upon a Leaſe for Life, grants the Reverſion by the Premiſſes of the Deed to another, after the Death of the Leſſee, this is a void Grant, becauſe it is to commence at a day to come; and ſo it had been, if it had been an *Habendum*, *Rolls* 1. *pt.* 261 *Bridgman* v. *Charlton.*

28. A Grant *de prima veſtura*, the Soil paſſes not, but if it be *de veſtura*, otherwiſe, *Palmer's Rep.* 175. Biſhop of *Oxford's Caſe.*

29. A Grant to *A. Habendum* to him and two others, *A.* ſhall only have it, and for his own Life, *Palmer's Rep*, 32. *Tyler* v. *Fiſher and Greenwood.*

30. The King grants *Omnes Curias ſuas*, within the Manor of *Dale*, all his Courts, as well Court Leets as Court Barons, ſhall paſs, *Kelweys Rep. f.* 198. *pl.* 1.

31. Lands are granted to two men, *& Hæredibus*, they ſhall have but an Eſtate for term of Life, becauſe it is not certain, to whom the Inheritance is limited, *Kelweys Rep. f.* 108. *pl.* 26.

32. A Corporation by the change, or alteration of the name of the Corporation in a Grant, doth not loſe their Privileges and Franchiſes, *Sanders* 1 *pt.* 344. *Mellor* v. *Spateman.*

33 When

33. When the uſe of a thing is granted, all is granted, by which the Grantee may have and enjoy ſuch uſe, *Sanders* 1 *pt.* 322, 323. *Pomfreit* v. *Ricroft.*

34. Tenant by the Courteſie of *England*, grants his Eſtate over, the Grantee dies, there ſhall be an occupancy, *Palmer's Rep. f.* 32. *Tylor* v. *Fiſher and Greenwood.*

35. Tenant for Term of Life, grants the Land to *B. Habendum ſibi, & Hæredibus ſuis*, for the Term of the life of Tenant for life, this is no forfeiture, for all is but a limitation of the Eſtate, *Br. Forfeiture de Terres* 87. *vid.* 21 *H.* 8. 1. *and* 12 *H.* 87.

36. A Grant of Land ſhall paſs Houſes built newly upon them, *Palmer's Rep.* 320. *Burton* v. *Brown.*

37. A Grant *per nomen Meſſuagij, ſive Tenementi*, neither a Garden nor Land paſs, for by ſuch Words nothing paſſes but the Houſes and Precinct of them; and a Garden is a thing diſtinct, for in a *Præcipe*, the Writ ſhall ſay, *De uno Meſſuagio, & uno Gardino*, which doth prove them to be ſeveral, which was granted by the Juſtices, *Daliſons Rep. f.* 29. *pl.* 5.

38. Two Barons and their Femes, joyn in a Grant of Lands, of their Wives Coparceners; and they Covenant, that they had a right to convey; Breach aſſigned; that one of the Wives was an Infant, or under Age, it was held a good Breach, *Jones's Rep. f.* 195. *Naſh* v. *Aſton.*

II. Queſtions *with their* Reſolutions.

Q. 1. *If there be two Executors, and one of them grants to another a Term of Years, How much of it paſſes whether all, or half of the Term?*

S. *Knightly* demanded this Queſtion; If two Executors have a Term, and one of them grants to a Stranger all, that doth belong unto him, how much of the Term ſhall paſs? And the Court was of Opinion, that all the entire Term paſſeth; for that each had an intire Authority and intereſt in the Term, as Executor, *Mich.* 28 *H.* 8. *Dyer f.* 23 *b. pl.* 146.

Q. 2. A. *having granted to him the next Avoidance to a Church, doth make two, his Executors by his Will, and dies, whether can the Executors grant this next Avoidance, before a probate of the Will?*

S. In a *Quare Impedit* brought by *S.* againſt *C.* and others, the Plaintiff intitles himſelf to the next Avoidance of a Church, by the Grant of the true and rightful Patron made to a Stranger, who appointed two Executors, by his Will, and dies; and the Executors granted the next Avoidance to the Plaintiff, and all their Intereſt therein, that the Church is now void, and avers that this is to be the next Avoidance; *& hoc abſque oſtenſione Literarum Teſtamenti* of the firſt Grantee; and as it ſeems, he was not bound to ſhew them; for altho' the two Executors never prove the Will, yet their Grant

of

of the Advowſon is good; and it is an Adminiſtration in Law, *Mich.* 3 *and* 4. *Ph. and M. Dyer* 135. *a.*

3. *If one grants all his Manor of* D. *in* N. *and all his Lands in* England *parcel of the Manor, whether all the Lands ſhall paſs which he has in* England, *parcel of the ſaid Manor?* Q.

Coke ſaid to his Companions, the Judges, that this Caſe was referred to him; and therefore he prayed their opinion in it. *Silicet*, If I grant all my Manor of *Dale* in *Norfolk* to another, and all my Land in *England* parcel of the ſaid Manor, what ſhall paſs by this Grant? And they ſaid, that all the Land ſhall paſs, which he has in another Countie in *England* which is parcel of the ſaid Manor; *Quod fuit conceſſum per Coke*: But he ſaid, that if I have a Manor, which extends it ſelf into two Counties, and I grant all my Manor in one County, nothing ſhall paſs of it, in the other County; and ſo is the 9 *E.* 4. but in the Caſe before the Subſequent words add to the firſt, *Ergo. Rolls* 1 *pt.* 407. *pl.* 43. S.

4. *Lands are granted from the Crown to the Honeſt men of* Iſlington, *without ſaying; Habendum to them and their Heirs, or Succeſſors, rendring a certain Rent, whether this be a good Corporation perpetual?* Q.

It was held for Law in the Star Chamber by *Bromley*, Chief Juſtice, *Baker* and others, That if the Queen at this day will by a Charter grant Land *Probis hominibus villæ de Iſlington*, without ſaying, *Habendum iis, & hæredibus, vel Succeſſoribus ſuis, Reddendum* a Rent, that this is a good Corporation perpe- S.

tual for this intent only, and not to other intents; for that a Rent is reſerved, &c. But then it ſeems, that they are not otherwiſe than Tenants at Will; and if the Queen will releaſe, or give to them the ſaid Rent, and Fee Farm, the Corporation is diſſolved *ipſo facto*, for the Rent and Feefarm was the cauſe of enabling them to be a *Body Corporate*, *Trin.* 1 *Mar. Dyer* 100. *a. pl.* 70.

Q. 5. *Tenant in Tail of a Manor, to which an Advowſon is appendant, grants the next Avoydance of the Advowſon, and dies, and the Iſſue in Tail enters, whether the Grant of the next Avoydance be good?*

S. By the Court it was Adjudged, that the Grant is void; for that it is but a Chattle, and no Rent reſerved on it, and it is a thing that lies in Grant, and of which no *Formedon* lies. And *Coke* ſaid, It was ſo adjudged in this Caſe before in *Banco*, *Rolls* 1. *pt. f.* 190, 191. *Bowles* v. *Walter*.

Q. 6. *A Grantee of a Manor before Attornment grants the Advowſon appendant, and Attornment is made, whether this Grant be good or not?*

S. A man ſeiſed of a Manor, with an Advowſon appendant, Grants the Manor *cum pertinentijs*; the Grantee grants the Advowſon, and then the Tenants attorn; and it was adjudged, that the Grant was good, *Palmer*'s *Rep. f.* 352. *Lord Sheffield*'s *Caſe*.

Q. 7. *A grant or any other Conveyance made to one, by the name of a Knight, when he was not a Knight, whether this can make the Grant, or other kind of Conveyance void?*

A Conveyance was made to *Radolfe Evers* Knight Lord *Evers*, and for to avoid this Conveyance, it was alledged, that at the time, when this Conveyance ſo made, he was not *Cognitus & Reputatus per nomen Militis*, that he was not then a Knight, and whether this ſhall make void the Conveyance, or not was the Queſtion. The Judges did all of them clearly agreee, that the Conveyance ſo made unto *Ralph Evers* Knight, Lord *Evers* is a good Conveyance, and the Plea in Barr to make void the ſame, is no good Plea; for that where a thing is ſo granted to one, by ſuch a name as that he cannot be intended to be another perſon, this is good, without any Chriſtian name expreſſed, and as the Caſe is here, there is but one Lord *Evers*, and therefore this is certain enough, for that the ſame doth well *conſtare de perſona*, and therefore the other Addition here of Knight (tho' falſe) notwithſtanding; yet this Falſity ſhall not take away the deſcription of the true perſon to whom the Conveyance was made, but that he ought to have the ſame being here ſufficiently expreſſed by the name of Lord *Evers*, and therefore by the opinion of the whole Court, the Plea in Barr here is not good, but the Conveyance is good, and ſufficient to carry the Land unto the Lord *Evers*, tho' he were then no Knight, and this was the Judgment of the whole Court, *Bulſtrode* 1 *pt. f.* 21. *The Lord Evers and Stricklands Caſe.* S.

8. *A man Bargains, Sells and Grants a Manor with an Advowſon appendant, the Church* Q.

becomes void, before Enrolment, whether he may preſent by the word Grant or not?

S. A man doth Bargain, Sell and Grant his Manor, with the Advowſon to the ſame Appendant, the Church becomes void, before the Enrolment, the Bargainee ſhall not have this preſentment, as a Grant of the ſame by the word *Grant*; but he is to have all by the bargain and Sale, and then he has no right to this preſentment, before the Enrolment of the Deed, and ſo it hath been adjudged, *Bulſtrode* 2 *pt. f.* 8, 9. *Billingſly* v. *Herſey*.

Q. 9. *Liberty of a Warren granted by the King to three Coparceners of three Manors, in all the ſaid three Manors, they make Partition, and one of them grants her Manor, whether the Grantee ſhall have this Liberty of Warren?*

S. If the Queen grant to three Coparceners of three Manors, the liberty of Warren in all the ſaid three Manors; they after make partition, ſo as each Coparcener hath a Manor, and one of them grants her Manor, the Grantee ſhall have Warren; but if the Queen grant a Leet, and the Coparceners make Partition, and each of them hath a Manor, ſhe ſhall not have alſo a Leet; but the Leet, which was granted doth remain in Common, and there ſhall not be upon ſuch Partition, ſeveral Leets, *Leonard* 1. *pt. n.* 33. *Marſh and Smith's Caſe.*

Q. 10. *Leſſee for ten years grants a Rent Charge to the Leſſor for the ſame years, and the Leſſor grants the Remainder in Fee, to his Leſſee for years, whether by this the Rent be extinguiſhed?*

Leſſee

Leſſee for ten years granted a Rent Charge to his Leſſor for the ſaid term of years, and tho Leſſor granted the Remainder in Fee to the Leſſee for Term of years; It was the opinion of the Court, that the Rent was gone; becauſe the Leſſor who had the Rent, was party to the deſtruction of the Leaſe, which is the Ground of the Rent, *Leonard* 4 *pt. n.* 4. *Manning and Andrew's Caſe.* S.

11. *Lands demiſed to Husband and Wife for their Lives, the Remainder to the Survivor of them for years, the Husband grants over this Term of years, and dies, whether the Wife, or the Grantee ſhall have this Term for years?* Q.

It was adjudged, that the Wife, and not the Grantee, ſhall have it; and it was upon this reaſon, becauſe there was nothing in the one or the other to grant over, until there was a Survivor; and the ſame Law had been, if the Wife had died, after the Grant, and the Husband had ſurvived, yet he ſhall have the Term againſt his own Grant; as if a Leaſe were made for Life, the Remainder for years to him, which ſhall firſt come to *Pauls*; If *A.* grants this Term, and afterward *A.* is the firſt, which cometh to *Pauls*, yet the Grantee ſhall not have this Term, becauſe it was not in *A.* by any means, neither in intereſt, nor otherwiſe, until he came to *Pauls*, *Popham Rep. f.* 5. S.

12. A. *granted to* B. *a Rent Charge out of his Lands to begin, when* I. S. *dies without Iſſue of his Body, which Iſſue dies without Iſſue, whether this Grant ſhall take Effect?* Q.

Dyer

S. *Dyer* held, that the grant ſhall not take effect, for *I. S.* at the time of his Death had Iſſue, and therefore from thence, the Grant ſhall not begin; and if not then, then not at all; *Manwood* ſaid, that if the words had been, to begin when *I. S.* is dead without Iſſue of his Body, then ſuch a Grant ſhall take effect, when Iſſue of *I. S.* dies without Iſſue, *Leonard* 4 *pt. f.*

Q. 13. *Leſſee for years of the Pawnage of the Park of* H. *grants all his Goods, Moveables and Immoveables within the ſaid Park, whether the Leaſe of the Pawnage paſſeth by the words aforeſaid?*

S. It was holden by *Weſton* and *Dyer* Juſtices, that the Leaſe of the Pawnage, paſſeth by theſe Words; and it was ſaid by *Dyer*, if a Man hath a Leaſe, that as well the Leaſe of the Houſe, as the Goods within it, paſs by ſuch a Grant, *Leonard* 3 *pt. n.* 46. *vid. Daliſon's Rep. f.* 82. *pl.* 26.

Q. 14. *A Grant to* I. S. *and there be many of that name, to whom this grant ſhall be intended?*

S. If there be two *I. S.* and I give Land to *I. S.* it ſhall be intended to my next Neighbour, but if one be my Kinſman, although he dwells 40 Miles from me, yet he ſhall have the Land, *Owen's Rep. f.* 64. *Lane* v. *Coups.*

Q. 15. *The King grants Lands to* I. N. & Hæredibus maſculis ſuis, *whether this Grant be good?*

S. The King makes a grant of Lands to *I. N.* and to his Heirs Males, this Grant is void, becauſe the King is deceived in his Grant, for

for this ſounds in Fee ſimple, whereas the King intended no other than an Eſtate Tail, which is not ſo expreſſed, and therefore *I. N.* is no other than a Tenant at Will, but otherwiſe it is in the Caſe of a common perſon, *Br. Patents* 104. *and Eſtates* 84. *Mich.* 9 *and* 10 *Eliz. Com.* 335.

16. *Whether upon a falſe Suggeſtion, or falſe Conſideration, the Grant of the King ſhall be void?* Q.

There is a diverſity taken between a falſe Suggeſtion or Surmiſe, and a falſe Conſideration in a Grant from the King; for 'tis ſaid for Law, that a falſe Conſideration in Letters, Patents ſhall not make them void; as where the King for ten Pounds to him paid, hath granted ſuch Land, and the ten Pounds are not paid; the Patent is not void, nor ſhall it be repealed; but contrary it is of a Patent granted upon a falſe Suggeſtion, or Surmiſe, as to falſifie, that the Land came to the King by the attainder of *I. S.* which is not true, or the like, *Br. Patents* 100. S.

17. *A Parſon within the Age of* 21 *years, grants a Leaſe of his Benefice, whether this ſhall bind him?* Q.

If a Parſon, Prebend, or the like be within the Age of 21 years, and he grants a Leaſe of his Benefice, within Age, this ſhall bind him; For here he is admitted by the Law of Holy Church, to take a Benefice within Age; ſo the Common Law of *England* makes him able to Leaſe his Benefice within Age, *Br. Age* 80. S.

18. King

Q. 18. *King* H. 8. *granted* Turbariam ſuam *in* Dale *to one* Farrington, *Rendring Rent for* 21 *Years, and then the Grantee imployed part of it in arrable Land, and left part of it in Turbary; And then Queen* Mary *granted* Totam illam Turbariam *before demiſed to* F, *whether only that paſſed which was Turbary?*

S. It was adjudged, That that paſſed only, which was *Turbary*, and the other part, that was converted into Tillage did not paſs, *Owen's Rep. f.* 67. *Farrington* v. *Charnock.*

Q. 19. *What paſſes in a Grant, by the word Scite of a Manor?*

S. It was ſaid by *Brown*, that if *H.* does let the Scite of a Manor with all his Lands to the ſaid Manor appurtenant, hereby all the Demeſn Lands do paſs; But if it were with all the Lands appertaining to the Scite, nothing paſſes but the Manor place, *Owen's Rep. f.* 51.

Q. 20. *A man gives, or grants Lands to* I. S. *in the Premiſſes,* Habendum *to him, and three others for their Lives,* & eorum diutius viventium ſucceſſive, *the Queſtion is, what Eſtate* I. S. *had, and whether there be any occupancy in the Caſe?*

S. It was adjudged, That the parties could take nothing in poſſeſſion joyntly, nor by way of Remainder, and that no Occupancy could be in the Caſe, and that *I. S.* had an Eſtate for term of his own Life only, *Owen's Rep. f.* 38. 39.

Q. 21. *By the Grant of all Lands and Hereditaments in* D. *whether Copihold Lands ſhall paſs.*

It was agreed, that where a grant is made of my Lands, and Tenements in *D.* that Copihold Lands paſs not, becauſe they cannot paſs by ſuch an aſſurance, and that Copyhold Lands were not within the Statute of Bankrupts, if they be not particularly expreſſed, and a Copihold cannot paſs, but by Surrender, *Owen's Rep. f.* 37. *S.*

22. *A man grants his Land,* & totum ſtatum ſuum, Habendum *for* 60 *years, whether the* Habendum *be repugnant to the premiſſes, and conſequently void?* *Q.*

Upon Evidence the Caſe was, That Sir *Thomas Lake,* being Seiſed in Fee of Lands, *&c.* Levied a Fine to the uſe of Sir *Nicholſon Forteſcu* for 41 years, if Sir *Thomas Lake* lived ſo long, the Remainder to his Wife for Life, the Remainder to Sir *Nicholas Forteſcue* for the Life of *T. L.* with other Remainders over; Sir *N. F.* granted the Land *& totum ſtatum Suum,* to one *H.* and *D. Habendum* for 60 years, and after Sir *N. F.* demiſeth the ſame Lands to the ſaid *H.* and *D. &c.* by indenture for 60 years, if Sir *Thomas Lake* Junior, or his wife Live, ſo long. *P.* and *D.* by Indenture, reciting this laſt demiſe, aſſign, and grant the ſaid Term, *Habendum* the Land, *& totum ſtatum ſuum,* during the Reſidue of the ſaid term of 60 Years, to Sir *Tho. Lake*; and the opinion of the Court was, That by the Grant of Sir *N. F.* his whole Eſtate, his Remainder paſſed, and the *Habendum* Repugnant, becauſe no other Ceremony was requiſite, he himſelf being Tenant for years, *Allen's Rep. f.* 59. *Bernard* v. *Bonner.* *S.*

23. *A*

Q. 23. *A Leaſe for Life granted to a Copyholder, without Deed, or Livery, whether it ſhall deſtroy the Copihold?*

S. In Evidence one of the Jury demand of the Court their direction therein, if the Lord make a Leaſe for Life to a Copiholder by Parol, whether this deſtroys the Copihold? The Court (*viz. Hide* and *Jones*) ſaid, that it did, if Livery was made, otherwiſe not, by Deed, *Latch's Rep.* 213. *Anonymus.*

Q. 24. *Two Jointenants hold of a Lord, and the Lord grants the Services of one of them, and the other atturns, whether the Grant be good for one Moyety of the ſervices, or void in all?*

S. It is adjudged, That the Tenure of the two Jointenants cannot be ſevered by the Grant of the Lord, and by the Attornement of one of them, *Kelwey's Rep. f.* 124. *b.* 125. *a.*

Q. 25. *Whether a Leaſe granted by a Joyntenant to commence immediately, after his Death, ſtall bind his Companion?*

S. In the Kings Bench was this Caſe, there were two Joyntenants for Life, and one of them makes a Leaſe of the Land to begin immediately, after his Death; He, that made the Leaſe, dies, and the Leſſee after his death enters into the Land, Claiming his Leaſe; in which Caſe the opinion of the Judges was had, and they held, that this Leaſe binds his Companion, as well as a Leaſe made to commence immediately, or at a day to come after, if it took its Effect in poſſeſſion in the Life of the Leſſor, *Anderſon* 2 *pt. f.* 16. *n.* 9.

26. *A*

26. *A Grant of a Leaſe for 99 years, if two Perſons ſhall ſo long live, whether the Leaſe determines, upon the Death of either of them?* Q.

In an Ejectment upon a ſpecial verdict the Caſe appeared to be thus; That Articles of Marriage were made between the Eldeſt Son and Heir Apparent of the Defendant, and *Martha* one of the Daughters of *William Naylor*, whereby the Defendant was to ſettle the Lands in Queſtion, upon the Leſſor for his Life, and after his deceaſe, upon *Martha* for a Joynture, with a *Proviſo*, That the Leſſor ſhould make a Leaſe of the Premiſſes to the Defendant for 99 Years, if the Defendant and *Suſan* his Wife ſhould ſo long live, and that *Suſan* died before the Leaſe made to the Plaintiff; ſo the only Queſtion was, *whether the Leaſe for 99 years determined by the Death of the ſaid* Suſan? The Court upon the firſt opening, without Argument were all of opinion, that it did determine, and ordered Judgment to be entred for the Plaintiff. *Ventris 2 pt. f. 74. Bailes* v. *Wenman. vid. 1 pt. of the Guide to the Conveyancer, Queſtion 6. p. 33. Tit. Grant.* S.

27. *Grant of an Annuity for 30 years, to Commence after the death of the Grantor, whether it ſhall bind his Heir?*

A Grant of an Annuity for him, and his Heirs, to be paid annually at the four uſual Feaſts for 30 years, and it was to commence after the death of the Grantor; And it was agreed by the Judges, that this is a good Grant, and charges the Heir, although it privily Commenced in him: for *Yelverton* ſaid, he charged himſelf, and the Grant is S.

for

for him, and his Heirs, and the Warranty which is ſo granted to commence 30 years after, although the Father dies before the commencement thereof, yet it ſhall bind his Heir, ſo it is of an Obligation to be paid 30 years after, *quod fuit Conceſſum*, *Littleton's Rep.* 245. *Tewkley* v. *Clothworker.*

Q. 28. *Three Coparceners being Seiſed of a Manor in Fee, to which a Leet is Appendant, do grant to the King two parts of the ſame Manor, with the Appurtenances, whether the Leet by ſuch Grant be extinct?*

S. By the opinion of the Juſtices of the Common Pleas, that if three Coparceners are ſeiſed of a Manor in Fee, where a Leet or Law-day is appendant, and they grant to the King two parts of the ſame Manor, with the Appurtenances, that yet ſuch Leet by ſuch grant is not extinct, but this Leet remains yet appendant to the third part of the ſame Manor, *Bendloes Rep. f.* 20. *pl.* 29.

Q. 30. *A man ſeized of a Manor in Fee, makes a Leaſe for years of the Scite of the Demeſns of the ſaid Manor to another, and after the Leſſor grants the Reverſion of the ſame Manor to another in Fee by Deed, and the Tenant attorns to the Grant, whether by this Grant and Attornment the Reverſion paſſeth?*

S. All the Juſtices ſaid, That the Grantee takes nothing by this Grant, becauſe the Grantor had not any Reverſion of the Manor, and the Scite, and the Demeſnes, are not the Manor, *Bendloe's Rep. f.* 24. *pl.* 39.

30.

31. *A Leaſe for years, provided that the Leſſee, nor his Aſſigns ſhall grant his Term over, nor any parcel thereof, and then the Leſſee dieth Inteſtate, the Ordinary commits Adminiſtration, and after the Adminiſtrator, being in Poſſeſſion, of the Term for years, grants parcel of it over to a Stranger?* Q.

It was thought, That the condition was not broken, for an Adminiſtrator is not an Aſſignee, but a Servant to the Ordinary, and comes in, in the Poſt. *Dyer* ſaid, that he is an Aſſignee in Law, but not an Aſſignee in Deed, and the Queſtion may be, whether the words ſhall extend to an Aſſignee in Law, or but to an Aſſignee in Deed, becauſe the words ſhall be taken ſtrictly; and ſo he intends, that the condition is broken; and it was agreed, that the deviſee is not an Aſſignee, becauſe he comes in, in the *per. Daliſon's Rep. f.* 83. *pl.* 29. S.

32. *A man grants his Manor with the Appurtenances, what thing ſhall paſs therewith?* Q.

By *Hales* and *Portman* Juſtices, it was held, That if a Man be Seiſed of a Manor, which extends into two Counties, or three Towns, to which an Advowſon is Appendant, and grants his Manor in one County, or in one Vill, with the Appurtenances; now altho' nothing paſſes, by this Grant, but that part of the Manor, in that County, or in that Vill, where the grant was, yet the entire Advowſon paſſes, becauſe the Grantor had granted his Manor by this name, and he is concluded to ſay the contrary, but that he had granted all his Manor, *Daliſon's Rep. f.* 18 *and* 19 *pl.* 2. S.

Q. 33. *Whether a Leaſe, or other Eſtate granted by a Perſon Out-lawed after the Outlawry, and before Inquiſition taken, can prevent the Kings Title?*

S. Upon Engliſh Bill the Caſe was; A Man was Outlawed, and afterwards made a Leaſe of his Lands, and then theſe Lands amongſt others, were found by Inquiſition, and this Leaſe was pleaded in Bar to bind the King, being before the Inquiſition; and the Court held, That a Leaſe, or other Eſtate made by the party, after the Outlaury and before the Inquiſition taken, will prevent the King's Title, If it be made *Bona Fide*, and upon good conſideration; but if it be in Truſt for the Party only, It will not be a Bar; But that no Conveyance whatſoever, after the Inquiſition, will take away or diſcharge the King's Title. *Hardreſſe's Rep. f.* 101. Attorney General v. Sir *Ralph Freeman* and others.

Q. 34. *If a Church be void, and the King grants the Manor, with the Advowſon Appendant, whether the Advowſon ſhall paſs?*

S. Sir *Thomas Gorge*, and the Lady *Helena*, his Wife, brought a *Quare Impedit* againſt *Francis Dalton*, who Pleaded, that the Queen was ſeiſed of the Manor of *D.* to which the Advowſon was Appehdant, and ſo ſeized, the Church became void, and that afterward the Queen granted the ſaid Manor with the Advowſon to *I. S.* who preſented the Defendant; It was the Cleer opinion of the Court, that by that grant of the Queen, the Advowſon did not paſs, although that the King by his Prerogative may grant a thing in

in Action, *Leonard* 3 *pt. n.* 246. *George and Dalton's Caſe, and Owen's Rep. f.* 53.

35. *Whether the Grant of an Avoidance by Letter, be good or not?* Q.

One *Cripps* brought a *Quare Impedit* againſt the Biſhop of *Coventry* and *Litchfield*, and others, and declared upon a Grant of the next Avoidance, and the Defendant demanded *Oyer* of the Deed, and the Plaintiff ſhewed a Letter, which was written by his Father to the true Patron, by which he had written to his Father, that he had given to his Son, that was Plaintiff, the next Avoidance; and upon this, there was a Demurrer, and the whole Court was for the Demurrer; for that ſuch Letter was a Mockery, for the Grant was not good without Deed; And Judgment was given accordingly, *Owen's Rep. f.* 47. S.

36. *A Man Seiſed of Lands in Fee, grants a Leaſe for Years, Reſerving Rent to him, and to his Executors and Aſſigns, and during the Term, the Leſſor dies, and his Heir, who hath the Reverſion brings an Action of Debt, whether it be well brought by the Heir?* Q.

It was urged, that the Rent was incident to the Reverſion, and the Heir, having the Reverſion, ſhall have the Rent alſo as incident to it. But it was adjudged to the Contrary by the Court; for when *H.* paſſeth Lands from himſelf, the Law gives him Liberty to paſs them in ſuch way and manner as he himſelf will, and this Liberty ought to take effect, according to the expreſs words; for the Law will not extend the words further, for the intent ſhall appear by the S.

words, and then it cannot be here intended, that his Will was, that his Heir ſhall have the Rent, becauſe the words are not ſufficient to give it to his Heir, *Owen's Rep. f.* 9. *Richmond's Caſe.*

Q. 37. *A Leaſe of a Manor is granted,* Habendum *with all the Members, what ſhall paſs?*

S. A Man Seiſed of the Manor of *D.* doth grant a Leaſe thereof for years, with all the Members, and Appurtenances to the ſame; to have, and to hold all the Members of the ſaid Manor to the Leſſee for Term of years.

Walſh and *Weſton* were of opinion, that this was a Leaſe for years of the Manor only, and that the Limitation of the Members, being after the *Habendum* was void; but *Dyer* and *Brown* were of the contrary opinion; and *Brown* ſaid, that when the *Habendum* is uſed, by way of Limitation, it ſhall not be void, and if he lett his Manor of *D.* to have and to hold one Acre parcel thereof for a Term of years, the Leaſe is void for all; but if there had been no *Habendum*, but the Leaſe for years had been limited in the Premiſſes of the Leaſe, that is good enough; and if the Leaſe had been, *Habendum* every part thereof, that had been a good Leaſe of the Manor, for all the parts comprehend all the Manor; and *Dyer* ſaid, that the word *Members* ſhall be taken for the Towns and Hamlets, wherein the Manor hath Juriſdiction, *Owen's Rep. f.* 31.

Q. 38. M. *grants to T.* 100 *Acres of Land in ſuch a Field, and* 60 *in ſuch a Field, and* 20 *Acres*

cres of Meadow in such a Meadow in W. *and* H. *in which the Acres are known, by Estimation, or Limits; whether the Gramee shall take the Acres, as they are known, or according to the measure by the Statute?*

Upon a matter of Arbitration between *Morgan* and *Tedcastle*, touching certain Lands, in *Welbourn* in the County of *Lincoln* put to *Popham*, *Walmesley and Ewens*, Baron of the Exchequer; whereas *Morgan* had granted to *Tedcastle* 100 Acres of Land in such a Field, and 60 in such a Field, and 20 Acres of Meadow in such a Meadow in *W.* and *H.* in which the Acres are known by Estimation, or Limits, there he shall take the Acres as they are known, and not according to the Measure by the Statute; but if I have a great Close, containing 20 Acres of Land by Estimation, which is not 18. And I grant 10 Acres of the same Close to another, there he shall have them, according to the measure by the Statute, because the Acres of such a Close are not known by parcels, or by Meets and Bounds, and so it differeth from the First Case; and upon the Case then put to *Anderson*, *Bryan* and *Fenner*, they were of the same Opinion *Popham*'s *Rep. f.* 55. *Morgan* v. *Tedcastle*. S.

The Third Conveyance *by way of* Fine.

A Fine is a real Agreement, beginning thus, *Hæc eſt Finalis Concordia*, &c. This is done, before the Kings Judges, in the Court of Common Pleas, concerning Lands that a man ſhould have from another to him, and his Heirs, or to him for his Life, or to him and the Heirs, Males of his Body, or for years Certain, whereupon Rent may be reſerved, but no Condition or Covenants. This Fine is a Record of great Credit, and upon this Fine are four Proclamations made openly in the Common Pleas; That is, in every Term, one for four Terms together; and if any man, having Right to the ſame, make not his Claim within five years, after the Proclamations ended, he loſeth his Right for ever, except he be an Infant, a Woman Covert, a Madman, or beyond Seas, and then his Right is ſaved; ſo that he Claim within 5 years, after the Death of her Husbands full Age, recovery of his Wits, or return from beyond Seas. This Fine is called a Feoffment of Record, becauſe that it includeth all that the Feoffment does, and worketh further of his own Nature, and barreth Entails Peremptorily, whether the Heir doth claim within five years, or not, if he claim by him, that Levyed the Fine. Lord *Bacon* in his Treatiſe, Intituled, *The uſe of the Law*, *p. Edit.* 1639.

I. Obſer-

I. *Obſervations.*

1. A Fine was Levied, and in one Term three Proclamations were made; and before the 4th. Proclamation was made, the Term was adjourned, ſo as the Fourth Proclamation could not be made the ſaid Term; It was agreed by the whole Court, That by that adjournment the Fourth Proclamation has not excuſed, but ſhould be ſupplied on the next Term, in which the 5th. Proclamation was to be made, *Leonard* 4 *pt. n.* 325. *Wingate and Sand's Caſe.*

2. It was moved for a Queſtion among the Juſtices in Sergeants Inn, If Fines be Levied, and engroſſed this Term, whether they ſhall be allowed to be, as Proclamations uſed to be done, according to the form of the Statute of 4 *H.* 7. or by vertue of the Statute 1 *Mar. cap.* 7. which ſpeaks only of the Adjournment of any Term, and in this Term the Adjournment was but for part of the Term, *Sc.* VIII. XV. *& tres Sept. Trinitatis* and not of the whole Term, and yet by opinion of all the Juſtices, the Fine ſhall be allowed with four Proclamations according to the Intent of the Makers, for there by reaſon, that no Proclamation can be made according to the Statute of 4 *H.* 7. for that the Term laſts but two *Dies Juridicos*, It is as if the Entire Term had been Adjourned, and the Statute is Beneficial and Profitable by E-

quity, *Mich.* 2 *and* 3 *Eliz. Dyer. f.* 186. *a. pl.* 68.

3. The Tenant in Tail, that Levieth a Fine with Proclamations ſhall be bound, and the Heirs of his body alſo, after the Proclamations made, and not before; ſo that if Tenant in Tail dies, before all the Proclamations made, this ſhall not bind the Iſſue in Tail, and the Proclamations cannot be made in a ſhorter time, than four Terms, *Br. Fines* 109.

4. Tenant in Tail, that is not party to the Fine, ſhall not be ſo bound, after the Proclamations, but that he ſhall have 5 years to make his Claim. But if he fail of them, and dies, his Iſſue ſhall have other 5 years, by the Equity of the Statute of *W.* 2. *cap.* 1. *Quod non Habent poteſtatem alienandi*, *Br. Fines* 109.

5. If the firſt Iſſue in Tail neglect the 5 years, by which he is Barrable by the Fine, his Iſſue ſhall not have other 5 years; for if the Iſſue be once Barrable by the Fine, the Tail thereby is bound forever, *Br. Fines* 109

6. The Statute of 4 *H.* 7. ſays, That a Fine ſhall bind Parties and Privies; and therefore where Tenant in Tail is party to the Fine with Proclamation, and his Iſſue claims *per formam doni*, the Iſſue is Privy; for he cannot convey himſelf as Heir to the Tail, unleſs *ut de Corpore patris ſui*, which is Privity. *Br. Fines* 109.

7. A Fine with Proclamations may be confeſſed and avoided, and then it ſhall not bind, for the Statute is intended, *de Finibus rite levatis*,

levatis, and therefore he may ſay, *That the Parties to the Fine had nothing in the Lands at the time of the Fine levied*; For if none of the Parties to the Fine had not any thing at the time of the Fine levied, then this will be a Fine by Concluſion between the parties themſelves; but all Strangers may avoid it, by an Averment *ut ſupra*, *Br. Fines.* 109.

8. By the Statute of 32 *H.* 8. *cap.* 36. a Fine with Proclamations by *Ceſtuy que uſe* in Tail, ſhall bind him and his Heirs, after Proclamations made, *Br. Fines* 109. and *Br.* Feoffments *al uſes* 56.

9. A Fine with Proclamation, the Reverſion or Remainder in the Crown, and the Conuſor dies, Altho' the Proclamations are fully made, is no Bar, nor Diſcontinuance, by reaſon that the Reverſion or Remainder is in the King which cannot be diſcontinued, and therefore the Iſſue in Tail may enter, after the death of Tenant in Tail, *Br. Aſſurances* 6. and *Br. Fines Levies* 121.

10. If *Ceſtuy que uſe* for Life, Levie a Fine with Proclamation, there no Body is bound to enter, or to make claim within 5 years, for that it is no other than a Grant of his Eſtate, which is Lawful, and can be no Forfeiture, for he had nothing in the Land, neither can he make a Forfeiture of the uſe; And it is the ſame of a Fine levied by Tenant for Life, in poſſeſſion, *Br. Feoffment al uſes* 48. *and Br. Fines Levies* 107.

11. If two perſons are of the ſame name, as ſuppoſe two *R. B's*, and one of them Levies a Fine of the others Land, the other party may avoid this Fine by Plea, *Sc.* to ſay, That there are

two of the ſame name, and that the other *R. B.* was the perſon that levied the Fine, and not this *R. B. Br. Fines* 115. *in Fine.*

12. A Fine levied by an Infant, cannot be reverſed, but by himſelf, by Writ of Error, during his Infancy, or Non-Age that the Court may ſee him, and thereby judge of his Age, 50 *E.* 4. 5. 17. *E.* 3. 52, & 78. As touching Inſpection for Infancy, and the manner of it, the Reader may ſee in *Palmer's Rep. f.* 326. in the Caſe of one *Wheatnal*, in *Rolls his Rep.* 1 *pt. and in Bulſtrode's Rep.* 2 *pt.*

13. Impediments of the Mind Caſual, are ſuch as affect furious Madmen, Lunaticks, Ideots, men having a Lethargy, whereto may be added doting Old Perſons, wanting diſcretion, Men Drunken; all theſe ought not to be Conuſors, for their Fines are not Reverſable, becauſe the Fine it ſelf argueth their Capacity and Abilities; for the Law intends that Judges will receive, no Conuſances of ſuch impotent and weak perſons; 17 *E.* 3. 5, & 78. 17. *Aſſ. pl.* 17.

14. A Feme Covert, within Age ought not to levy a Fine, for that ſhe cannot reverſe it, during the Coverture nor after, if the Coverture continue till ſhe be at full Age, 50 *E.* 3. 5. 27. *Aſſ. pl.* 53.

15. A Feme Covert ought not to levy a Fine, but with her right, and Lawful Huſband, 7 *H.* 4. 23. 42 *E.* 3. 20.

16. A Fine levied by a Feme Covert without her Husband of her own Lands, wherein ſhe hath Fee Simple, is an Eſtoppel againſt her, and her Heirs, if her Husband avoid

it

it not, by Entry, or otherwiſe, as he may during the Wifes Life, and after her Death during his own Life, as if he be Tenant by the Courteſy, 17 *E.* 3. 52, *&* 78. 17 *Aſſ.* 17. 7 *H.* 4. 23.

17. Perſons attainted of Felony, or Treaſon may not be Cognizors, by reaſon that by their offences, their Eſtates be forfeited; But if they do levy Fines, thoſe Fines are good againſt all perſons but the King, and the Lord, of whom their Lands are holden, 8 *Aſſ. pl.* 25.

18. If a Fine be levied to a Feme Covert, ſhe needs not to be examined, becauſe ſhe taketh by the Fine; and if ſhe had any better Eſtate before the Fine, the Fine ſhall not conclude her, to claim it, 3 *H.* 6. 42. 41 *E.* 3. 7. 50 *E.* 3. 9. 24 *E.* 3. 62.

39. Cognizees in Fines muſt be named, by their right proper Names and Surnames, for a Fine being Levied to *A.* and *Sibil* his Wife (where her Chriſtian name it *Iſabel*) is void, 1 *Aſſ. pl.* 11.

20. A Feme Sole, being a Stranger to a Fine and having a preſent Right, takes a Huſband, who ſuffereth the Five years to paſs, ſhe is thereby barred for ever, becauſe it was her own voluntary Act and Folly, to Marry ſuch a Husband, *Plowden's Comment.* 338. *a.*

21. If the Writ of *dedimus poteſtatem* for levying a Fine, doth not bear Teſte after the Writ of Covenant, it is Error, for the *dedimus poteſtatem* ſaith, *Cum Breve noſtrum de Conventione pendet inter* A. B. *&* C. D. *&c.*

Br.

Br. Fines levies 116. *vid. Rolls* 1 *pt.* 223. *Latch. f.* 186. *Tindall's Case.*

22. A Fine levied for better Assurance shall relate to the Original Conveyance, and shall not drown a Rent, or other Interest, *Palmer's Rep. f.* 506, 507.

23. Lessee for Life is disseised, and levies a Fine to a Stranger, the Lessor may enter for a Forfeiture, for the Privity remaineth notwithstanding the Estate be reduced to a Right, *Rolls* 1 *pt.* 301. *Holland and Lee.*

24. A Disseisor levies a Fine, and the Disseisee, for the Preservation of his Right against the said Fine, enters his Claim in the Record of the Foot of the Fine, this is not any such Claim, as shall avoid the Statute of 4 *H.* 7. *Leonard* 2 *pt. n.* 73 *Brasier's Case.*

25. A Fine levied in pursuance of a Covenant for further Assurance, which conteining more Land then is Conveyed, shall be to the use of the Conusor, as to the Surplusage, *Rolls* 1 *pt. f.* 103, 117. *Wilson* v. *Welch.*

26. A claim to avoid a Fine by Bill in Chancery, is not sufficient, but it ought to be by Action, *Dallison's Rep.* 116. *pl.* 9. *vid.* more of this matter 1 *pt. Qu.* 31. *p.* 69, *& Infra Qu.* 3.

27. When *Nihil* is upon the Writ of Covenant *pro licentia Concordandi*, according to the Ancient Custom, only Six Shillings and Eight Pence, ought to be always for the Post Fine, which is in the Case of the Lord Keeper, and some others, which are excused of the Fine *Pro licentia Concordandi, Littleton's Rep. f.* 236.

28. There

28. There is a difference, where a man may paſs a thing by a Fine, and where he may bar by a Fine; if a man hath a Right of a Copihold, the Right of the Copihold paſſes not by Fine, but it is barred by the Fine. A Man hath a rent Charge, he levies a Fine of the Land, the Rent Charge is gone by it, yet the Fine was not Levied of the Rent; and put the Caſe of a Truſt; a Feme Covert hath a Truſt, ſhe cannot tranſfer it, but if the Feme Covert, and her Huſband levy a Fine of this Land, as the Rent is gone by way of Diſcharge, ſo the Truſt is gone by way of Diſcharge, *Carter's Rep. f.* 34. *Taylor* v. *Shaw.*

29. If there be ſeveral Towns called *Bettars* (two whereof have Addition) a Fine of Lands in *Bettar* ſhall not extend to the other two; but if the other two are Hamlets, and if it be of Lands in *Parochria de Bettar*, it will, *Carter's Rep. f.* 81. *Thomaſin* v. *Mackworth.*

30. A Feme Covert levies a Fine as Feme Sole, if her Baron die, ſhe ſhall not defeat it, but the Baron may defeat it during his Life, *Stiles's Rep. f.*254. *Hayward* v. *Williams. Latch's Rep. Daniel* v. *Upley. vid Supra Obſerv.* 16.

31. A Fine and Non-Claim ſhall not bar an Eſtate, that is not turned to a Right, *Carter's Rep., f.* 82. *Thomaſon* v. *Mackworth.*

32. A Fine, and Non-Claim barreth not a Mortgage, or is no bar to a Mortgage, *Ventris* 1 *pt.* 82 *Freeman* v. *Barnes.*

33. A Fine not to be Conſtrued to amount to a ſpecial Entry, as a Feoffment ſhall, *Carter's Rep.* 176 *Randale* v. *Eeley.*

34. All

34. All Cognizors to a Fine, are eſtopped to Claim, *&c.* although they had not any Title in the Land, *Anderſon* 2 *pt. n.* 52. *f.* 79.

35. A Fine is found by verdict in *C. B.* but no Proclamations were found thereby; and yet the Court *ex Officio* would inſpect the Record before them, if there be any Proclamations, or not, and judged accordingly, *Anderſon* 2 *pt. n.* 31. *f.* 45.

36. A Leaſe made to commence in *futuro* and the time is come; and then one enters, upon the Land, and makes a Feoffment in Fee, and levies a Fine, he muſt enter, or elſe his Eſtate is barred, becauſe he had an Eſtate, upon which he might enter, *Carter's Rep. f.* 196. *Barnes* v. *Freeman.*

37. The Statute of 4 *H.* 7. barreth not by a Fine Levied with Proclamations, and 5 years paſt, by Tenant for years, or at Will, *Anderſon* 2 *pt. n.* 98. *f.* 176.

38. A Fine levied by Baron, the Baron dies, the Feme brings Error againſt the Heir of the Conuſee, being an Infant, Age ſhall in this Caſe be allowed to the Infant, and the Plea muſt ſtay, until his full Age, *Bulſtrode* 3 *pt. Herbert* v. *Binion.*

39. A Fine by *A.* and *B.* to *C.* and *C.* renders a Rent of 4 *l.* in Tail and renders the Land to *B.* yet the uſe of the Fine ſhall be to the Conuſee; For the Parties have admitted the Conuſee a party, capable to grant a Rent in Freehold, *Anderſon* 2 *pt.* 80, 81. 88. *n.* 52.

40. A Fine bars an Ideot; For none ſhall be ſuffered to aver, that the Conuſor was an Ideot

Ideot, *Anderſon* 2 *pt.* 193 *Hugh Lewis's Caſe, vid. Manfield's Caſe in Co. Lib.* 12. *f.* 123.

41. A Fine and Proclamations, and Five years paſt, after the Death of Tenant in Tail without Iſſue, is no bar to a Writ of Error brought by him in Remainder, Sir *Thomas Jones f.* 181. *Cockman* v. *Farrer.*

42. Tails cannot be docked neither by Fine nor by Recovery, where the Lands are of the gift of the King, and the Reverſion in the Crown, Sir *Thomas Jones's Rep.* 248. *Earl of Derbies Caſe, vid. ſupra obſerv.* 9.

43. A Fine Levied without an Original is void, and yet a Writ of Error lies upon it, *Kelwey's Rep. f.* 19. *b.*

44. A Grant and Render of a Rent by Fine, out of Land intailed, by Tenant in Tail, ſhall not bind the Iſſue in Tail by the Statute of 32 *H.* 8. *cap.* 36. Caſe reported by *Bendloe. Mich.* 3 *and* 4. *Eliz. Rot.* 1483.

45. Tenant in Tail, Remainder in Tail, levies a Fine, and Tenant in Tail dies without iſſue, he in the Remainder is bound to enter within Five years after the Death of Tenant in Tail, elſe he is barred, *Raymond's Rep. f.* 151. *Corbet* v. *Stone.*

46. Tenant for 99 years, if he live ſo long levies a Fine, and dies, he in Reverſion ſhall have five years after his death, *Raymond's Rep.* 219. *Whaley* v. *Tanner.*

47. In a Writ of Error for the Reverſing a Fine, the adverſe party cannot plead the ſame Fine (now endeavoured to be reverſed) in Bar to the Writ of Error; and the reaſon is, *Non potoſt adduci exceptio ejuſdem Rei, Cujus petitur*

petitur dissolutio, *Raymonds Rep.* 462. *Cockman* v. *Farrer.*

48. A Sergeant at Law would have drawn a Fine which was by *Dedimus Potestatem* and the Fine was to two, and their Heirs; but the Court would not receive such Fine for the uncertainty of the Inheritance which always in Case of a Fine, ought to be reposed in a certainty of Survivor; and this Sergeant prayed presently, that the said Fine be received at the Peril of the Conusees, but the same was denyed him, by the whole Court, *Leonard* 1 *pt. n.* 81.

49. Two Infants levy a Fine, although they joyn in Error, yet ought they to assign Errors severally, and Sue several Writs of Error, *Leonard* 1 *pt. n.* 445.

50. In a Writ of Error brought by a Remainder Man, to reverse a Fine by Tenant in Tail, the Plaintiff assigns for Error, that the Tenent in Tail, after the acknowledgment before Commissioners, and before the return of the Writ of Covenant, died; this was adjudged Error, and the Fine was accordingly reversed, *Raymond's Rep. f.* 462. *Cockman* v. *Farrer.*

51. It is said, that if a Judge takes the Conusance of a Fine, and dies, his Executors shall certify this Conusance, and so shall be ingrossed. 1 *H.* 7. 9. *a. and Bulstrode* 3. *pt. f.* 216. *Roswell and Welsh's Case.*

52. If the Husband and Wife Grant, and render a Manor for Term of Life by Fine, rendring the first year a penny, and for Six Years then next following, every year a Rose at the Feast of *Easter* and after the Six years,

years, every year ten pounds in Money with clauſe of diſtreſs; this Fine ſhall be received, but a Fine with Clauſe of Re-entry, ſhall not be received, becauſe that then the Eſtate ſhould be defeiſable, which is againſt the nature of a Fine, *Perkins Sect.* 629. *Tit. Reſervations.*

II. Queſtions *with their* Reſolutions.

1. *Feme Tenant in Tail, Remainder to her Siſters in Fee, Tenant in Tail, and her Husband levy a Fine to the uſe of them two, and the Heirs of the Body of the Wife, the Remainder to the Heirs of the Husband with warranty againſt them, and the Heirs of the Wife, the Feme dies without Iſſue, whether the warranty be a Bar to the Siſters?* Q.

It is held, That the warranty is a Bar to the Siſters, *Carter's Rep* 243. *Fowle* v. *Double.* S.

2. *A Feoffment is made to* I. S. *and his Heirs, until ſuch Sums of Money be paid, and in Caſe of non payment, a Reentry; the Money is not paid;* I. S. *Levies a Fine, and* 5 *years paſs, the Feoffees enter not, whether the Fine be a Bar?*

A man makes a Feoffment to one, and his Heirs, *Quouſq*; ſuch Sums be paid, and upon failure, the Feoffees to enter, *&c.* there is failure, He levies a Fine, and Five years paſs, the Feofffees enter not, the Fine Bars, *Carters Rep.* 81. *Thomaſon* v. *Mackworth.* S.

Q. 3. *Whether the delivery of a Declaration in Ejectment upon the Lands, can be such an Entry, or Claim as to avoid a Fine?*

S. Upon the Tryal in Ejectment, the title of the Plaintiff Lessor to be, by a Remainder limited to him for Life, upon divers other Estates, and that there was a Fine Levied and Proclamations passed; but he within the 5 years after his Title accrued, sent two persons to deliver Declarations upon the Land, as is the course upon Ejectments brought; The Court resolved, that this was no Entry or claim to avoid the Fine, he having given no expres Authority to the purpose, and the Confession of Lease, Entry and Ouster should not prejudice him in this respect, *Ventris* 1. *pt.* 42. *Clerk* v. *Phillips, and others, See* 1 *pt. Qu.* 31. *p.* 69. *Supra observ.* 26.

Q. 4. *Whether a Fine can be avoided for part, and can stand good for the Residue?*

S. *Vavasor* said; If I levy a Fine of certain Land, whereof parcel is guildable, and parcel Ancient *Demesne*; And as to that, which is Ancient *Demesn*, the Lord may reverse the Fine, by a Writ of Disceit, yet the Fine shall stand good for the Residue, and a mark shall be made upon the Fine in the nature of a Cancellation of that, which is Ancient *Demesn*, and the Record shall stand for the Remainder, *Kelweys Rep. f.* 43. *a. b.*

Q. 5. *Licence to Levy a Fine of a Rectory, and it is levied of a Messuage, whether this be good, upon the Conusees Averment that the House was parcel of the Rectory?*

The

The Queen granted Licence to one to levy a Fine of a Rectory in *Dale*, with 20 Acres of Land, and 10 Acres of Paſture, *cum pertinentijs* in *C.* and the Fine was levied of a Houſe, 20 Acres of Land, and 10 Acres of Paſture *cum pertinentijs* in *C.* Proceſs was awarded againſt the Conuſee, to the intent the Fine did not purſue the Licence; and it was held by the Court, that if the Conuſee will Averr, that the Houſe was parcel of the Rectory, he ſhall be Diſcharged, *Savil's Rep. n.* 37. *f.* 14. S.

6. Where and how a Fine levied by a Feme Covert ſhall be ſet aſide, and where the Commiſſioner, who took it may be Fined? Q.

Herbert Perrot, having Married a Wife, that had an Inheritance of a conſiderable value, prevails upon her (while ſhe was but of the Age of 20 years,) to levy a Fine upon which the uſe was declared to him and her, and the Heirs of their two Bodies. This was taken in the Country, upon a *Dedimus poteſtatem*, by Sir *Herbert Perrot* his Father, and another; after which the Wife died without Iſſue, but had Iſſue at the time of the Fine. S.

It was moved in Court, that this Fine might be ſet aſide, and a Fine impoſed upon the Commiſſioners, for the undue practice, and taking a Fine of one under Age; but all the Judges agreed, that they could not meddle with the Fine; but if the Wife had been alive, and ſtill under Age, they might bring her in by *Habeas Corpus*, and inſpect her, and ſet aſide the Fine upon a motion, for perhaps the Husband would not ſuffer the Q.

bringing, or proceeding in a Writ of Error.

S. The Court were of Opinion, that if a Commiſſioner to take a Fine, does Execute it corruptly, he may be Fined by the Court; for in relation to the Fine, (which is the proper buſineſs of this Court) he is ſubject to the cenſures of it, as Attorneys, *&c.* But they held, that they had no power to Fine Parties for a Miſdemeanor, in them.

North Chief Juſtice, and *Windham*, would have Fined Sir *Herbert Perrot*, for taking a Fine of one under Age; but *Atkins* and *Scroggs* diſſented, becauſe it did not appear, that Sir *H. P.* did know ſhe was under Age, and it could not be diſcovered by the view; ſhe being 20 years of Age, *Ventris* 2 *pt. f.* 30. *Herbert*, *Perrots Caſe*, *vid. Learning in Warcomb* and *Caroll's Caſe*, *Co. lib.* 12. *f.* 124. *Dyer f.* 220. *b. Daliſon's Rep. f.* 56. *pl.* 32.

Q. 7. *To what uſe a Fine ſhall be, where there are two or three Declarations of the uſes made?*

S. It was agreed by the Court, that if I by Indenture Covenant to levy a Fine to *A. B.* and *C.* with *R. C.* to the uſe of the ſaid *R. C.* and his Heirs; and after he Covenants with the ſaid *R. C.* to levy a Fine to the ſaid perſons to other uſes, or Covenants, with another perſon, to levy a Fine to the ſame perſons to other uſes, which are contained in the ſame Firſt Indenture, that in theſe Caſes, if it be intended by levying a Fine, to the uſes mentioned in the latter Indenture, that the ſaid Fine ſhall be to the uſes in the laſt Indenture; but if it was to the uſes contained in the former Indenture, then it ſhall be to thoſe

thoſe uſes; and in this Caſe it may be averred, to which of the uſes of both Indentures the Fine was levied; For the firſt Indenture doth not bind the Land, until the Fine be levied, and upon the Indentures it ſtands indifferent, upon what uſes the Fine was levied, *Anderſon* 2 *pt. n.* 33. *f.* 46, 47.

8. *A diſtreſs for the Arrears of a Rent-charge in Fee after the Grantee had Charged his Eſtate by a Fine Levied by himſelf, whether good?* Q.

A Grantee of a Rent-Charge in Fee, the Rent is in Arrear, the Grantee levies a Fine to the uſe of himſelf, and his Wife in Tail, and after diſtreins for the Arrears of Rent, before the Fine Levied; the Plaintiff ſhews all this in Bar to the Avowry for his Rent, and upon this the Defendant demurred. *Vaughan* Chief Juſtice; the diſtreſs is well taken. For he ſaid, 1. It would be a great inconvenience to Grantees, if the Arrears ſhould be loſt by the Fine, for upon every Marriage Settlement the Caſe happeneth, 2. It was not the intention of the Grantee, to deſtroy it, neither had the Tenant any reaſon to expect it, 3. And it is very Equitable, and of public convenience, that men ſhould be aided in the recovery of their Duties; and it may be in time of Contagion or War, and the like, that their Rents cannot be gotten, *Jones*'s *Rep. f.* 2. *Witherhead* v. *Harriſon.* S.

9. *A Fine is Levied by* B. *of the Manor of* Dale, *and* C. *has another Manor within the ſame County, upon a* Scire facias, *brought againſt* C. *to Execute the Fine of his Manor; how muſt* C. *plead?* Q.

S. A Fine is Levied of the Manor of *Dale*, and I have another Manor within the ſame County, and after a *Scire facias* is brought againſt me, to Execute the Fine of my Manor, if I plead, *nient Compriſe generally*, it will be found againſt me: But I may well ſay, that there are two Manors of *Dale*, within the ſame County, that is to ſay, one called *Eaſt Dale*, and the other *Weſt Dale*, and that the Fine was Levied of *Weſt Dale*, *Sans ceo*, that my Manor of *Eaſt Dale*, was compriſed within the Fine, *&c.* and this was adjudged between the Lord *Brook*, and the Lord *Latimer*, *Kelwey's Rep. f.* 49. *a.*

Q. 10. *Baron and Feme in Tail, Remainder in Fee to the Right Heirs of the Baron; the Baron alone Levies a Fine; whether the Iſſue in Tail be bound by the Statute of* 32 H. 8. c. 36.

Q. Land is given to Baron and Feme in Tail, the Remainder to the right Heirs of the Baron; The Baron alone Levies a Fine, and the Proclamations made, the Baron dies, and the Feme dies alſo; if the Heir ſhall have a Formedon, becauſe the Feme might have entred; and the Opinion of all the Juſtices was, that the Heir in this Caſe ſhall be bound, for he cannot claim but by the Gift in Tail, and that he cannot do now, for when he makes his Conveyance, he makes himſelf Heir as well by the Father, as by the Mother, and of this he is eſtopped to make by the Fine, Caſe Reported by *Daliſon*; *Anno* 5 *Eliz.*

Q. 11. *A Diſſeiſor of Lands in three Vills, Levies a Fine, with Proclamations of the Lands in one of the Vills, to another in Fee; and within the* 5 *years next enſuing, the Diſſeizee enters into the Lands*

Lands, in the other two Vills only, being in the Poſſeſſion of the Diſſeiſor, in the name of all the ſaid Lands in the three Vills, whether this Entry gains to him the Land in the third Vill?

It was adjudged, that this Entry, did not gain to the Diſſeiſee the Land in the third Vill, of which the Fine was Levied, without an Actual entry into it; becauſe the Conuſee was in, by Title, Caſe Reported by *Bendloe, Mich.* 14, *and* 15. *Eliz. Rot.* 1458. S.

12. *A Feme Sole ſeiſed of Lands in Tail, takes Husband, and ſhe and her Husband levy a Fine thereof in Fee, and the Conuſee renders the ſame Land again to the Baron and Feme in Tail ſpecial, the Remainder to the right Heirs of the Wife in Fee, and they have Iſſue a Son, and the Baron dies, and the Feme takes another Husband, and they levy a Fine of the ſaid Lands to a Stranger in fee, whether the Son may enter for a Forfeiture by the Statute of* 11 H. 7. c. 20. Q.

It was adjudged, that this Entry was not Lawful, for this Land was not by the firſt Fine the Inheritance, nor purchaſe of the former Husband, Caſe reported by *Bendloe, Paſch.* 16 *Eliz.* S.

13. *Whether a Writ of Error, by the Husband and Wife, within Age, ſhall reverſe a Fine levied by them, againſt Both?* Q.

In the 31 *Eliz.* in the Kings Bench between *Charnock* and *Wrotheſly* the Caſe was; Husband and Wife levied a Fine of the Wifes land, and after, becauſe the Wife was within Age they brought a Writ of Error, to reverſe the Fine; if this Fine ſhould be reverſed as to the Wife only, or againſt the Husband. S.

And after a long Debate, It was resolved, that it should be against both, for it is entire, and cannot be affirmed in part, and disaffirmed in another part, *Owen f.* 21 *Wright's Case*, *vid. Infra*, *Question* 20.

Q. 14. *Land was given to* A. *for Life, the Remainder to to* B. *for Life, the Remainder to one* Braybrook *in Fee,* B. *in Possession levied a Fine to a Stranger* Sur Conusance de droit come ceo, *&c.* A. *died*; *If now* Braybrook *might enter for the Forfeiture was the Question?*

S. It was agreed by the whole Court, that by that Fine, the remainder in Fee is not touched, or discontinued; but because *B.* had done as much as in him lay for the disposing of the Fee Simple by the Fine, the same amounts to a Forfeiture, *Leonard* 1. *pt. n.* 51. *Braybook's Case.*

Q. 15. *Tenant for Life of Land, leased parcel thereof to hold at Will, and being in possession of the Residue, Levied a Fine of the whole, the the Lessor entred into the Land, which was let at Will in point of Forfeiture, in the name of the whole, whether this be a good entry for the whole?*

S. It was holden by the Court, that the same is a goodEntry for the whole; but if the Disseisor Leaseth for years part of the Land, wherein the Disseisin was committed, and the Disseisee afterwards enters into the Land, which containeth the possession of the Disseisee in the name of the whole, the same Entry shall not extend to the Land Leased, for there the Lessee is in by Title, but in the other Case not; for when Tenant for Life Leaseth it at Will, and afterwards levies a Fine, the same

ſame is a determination of the Will, *Leonard* 1 *pt. n.* 66. *Potter and* Stedall's *Caſe.*

16. *A Fine Levied by a Diſſeiſor; and a Stranger within* 5 *years, after Proclamations, enters into the Right of the Diſſeiſee, without the privity of the Diſſeiſee, whether this ſhall avoid the Bar of the Fine, Levied by the Diſſeiſor?* Q.

In an *Ejectione firmæ* between *Pollard* and *Lutterel*, for Lands in *H.* and *L.* upon the Title between the Lord *Audeley*, and *Richard Audeley*, it was agreed by the Chief Juſtices; that if the Diſſeiſor levy a Fine with Proclamations, according to the Statute of 4 *H.* 7. and a Stranger 5 years after the Proclamations enter in the Right of the Diſſeiſee, without the Privity, or conſent of the Diſſeiſee that this ſhall not avoid the Bar of the Fine unleſs that he aſſent to it within 5 years; for the words of the Statute are; *So that they purſue their Title, Claim or Intereſt by way of Action, or Lawful Entry within* 5 *years*, &c. And that, which is done by another without their Aſſent, is not a purſuing by them, according to the Intent of the Statute; for otherwiſe by ſuch means againſt the Will of the Diſſeiſee, every Stranger may avoid ſuch a Fine, which was not the intent of the Statute, for otherwiſe by ſuch means againſt Will of the Diſſeiſee, every ſtranger may avoid ſuch a Fine, which wa, not the intent of the Statute, *Popham's Rep.* 108. *Pollard* v. *Lutterel*, *See* 1. *pt. Qu.* 11. *p.* 60, 61. *Tit. Fine.* S.

17. *A Father Covenanted with one* A. *that in Conſideration of a Marriage to be had, between the Son of the Covenantor, and the Daughter of* A. *that he before ſuch a day, would levy a Fine which* Q.

which ſhould be to the uſes of the ſaid Son and Daughter in Tail, for her Joynture; the Fine is Levied accordingly to the uſes aforeſaid; the Father dies, but in the Fine no mention is made of any Marriage had; whether the Eſtate Tail be well enough Executed in the Son and Daughter?

S. The Court was clearly of Opinion, that notwithſtanding the Marriage not accompliſhed, yet the Eſtate Tail was well enough Executed in the Son and Daughter, for the Fine without any conſideration doth carry the uſes; but without a Fine, ſuch a Conſideration would not raiſe ſuch an uſe, without accompliſhment of the Marriage, for the Conſideration Executed, ought to produce the uſe; but in this Caſe the uſes are perfected by the Fine; and *A.* upon the matter might have Covenant againſt the Father, to have the Fine before the Marriage, *Leonard* 1 *pt. n.* 188. *Stephens's Caſe.*

Q. 18. *Whether a Fine may be reverſed as to one, and ſtand good againſt another?*

S. A Caſe was, that the Husband and Wife Levied a Fine, the Husband died, the Wife being within Age, the Wife took another Husband, and they brought a Writ of Errour, and the Wife by inſpection adjudged within Age, the Fine was reverſed as to the Wife, and her Heirs, *Leonard* 1 *pt. n.* 157. *vid. Supra Queſtion* 15.

Q. 19. *Tenant in Tail, Remainder in Tail; Tenant in Tail in poſſeſſion, makes a Leaſe for three Lives, according to the Stat.* 32 H. 8. *and afterward dieth without Iſſue, he in the Remainder before any Entry, Levies a Fine, whether the Fine be good.*

It

It was the Opinion of the whole Court, that this Fine is good, for by the Death of Tenant in Tail without Iſſue, the Freehold is veſted in him in Remainder in Tail, *Leonard* 1 *pt. n.* 361.

20. *Husband and Wife Seiſed of Lands in the Right of his Wife, the Husband alone makes a Leaſe by Parol, for years; afterwards the Husband and Wife Levy a Fine, and then the Husband and Wife both die, whether this Leaſe can be avoided by the Conuſee?* Q.

It was holden clearly by the Court that the Conuſee of the Fine, ſhould avoid the Leaſe, *Leonard* 1 *part n.* 332. *Harvey and Thomas Caſe, and* 4 *part n.* 5. *Harvey and Thomas's Caſe.* S.

21. *A man by Deed, during the Coverture, makes a Joynture to his Wife, afterwards the Husband and Wife joyn in a Fine of his Land, the Husband dies, whether the Wife ſhall have Dower or not?* Q.

It was agreed by the Court, that if a man make a Joynture, by Deed unto his Wife, during the Coverture, and afterwards of this ſame Land, the Husband and Wife do Levy a Fine, yet clearly this ſhall be no Barr to her, from bringing her Writ of Dower, but that ſhe may well have this, after the Death of her Husband, *Bulſtrode* 1 *part f.* 173. S.

22. *Tenant for Life, Bargained and Sold his Lands to* A. *and his Heirs, and afterward levied a Fine to the Bargainee,* Sur conuſance de droit come ceo, *&c. whether this be a Forfeiture committed by the Bargainee?* Q.

It

S. It was holden, that it was a Forfeiture committed by the Bargainee, not by the Bargainor, who at the time of the Fine levied had nothing to forfeit, *Leonard* 1 *pt. n.* 354.

Q. 23. *A Remainder is limited in Tail to* I. S. *and the Heirs of his Body to begin after the death of Tenant for Life, whether a Fine be Levied by him in Remainder, with Proclamations in the Life time of Tenant for Life, can bar the Issue in Tail?*

S. It was adjudged, that the Estate Tail by that Fine was utterly barred, and Extinct, *Leonard* 3 *pt. n.* 276. *Johnson and Bellamie's Case.*

Q. 24. *Error being brought for the Reversal of a Fine, for want of Proclamations, whether if the Proclamations be Reversed, the Fine shall remain a good Fine at the Common Law?*

S. A Fine was Levied with Proclamations according to the Statute of 4 *H.* 7. the Error assigned for to reverse this Fine, was for that no Proclamation was made the first day. The whole Court was of Opinion, that this was an Error apparent, for to reverse the Proclamations, but the Fine still remains as a good Fine at the Common Law, and so for this Error, the rule of Court was, to reverse the Fine, as to the Proclamations only, but the same still to remain as to the Fine, as a good Fine at the Common Law, *Bulstrode* 1 *pt. f.* 206.

Q. 25. *Whether the non-payment of the Post-fine, be a breach of a Covenant for discharging Incumbrances?*

A man Levies a Fine of certain Lands, and after Covenants, that the Lands are discharged of all Acts, Incumbrances (done by him) and in truth, the Poſt-Fine was not paid for the Covenant; *Dyer* ſaid, that it is clear, that the Covenant is broken, for all the Lands of him, that Levied the Fine, are Chargeable by the Poſt-Fine, and eſpecially this Land, whereof the Fine was Levied, *Daliſon's Rep. f.* 78. *pl.* 11. S.

26. *If a Bargainee Levie a Fine, and within Six Months, the Deed is inrolled, whether the Land ſhall paſs by the Fine?* Q.

Land was Bargained and Sold, the Bargainee Levies a Fine, and afterwards within the Six Months, the Deed is inrolled; it ſhall paſs by the Fine, and the Conuſee ſhall have the Land, for the enrolment ſhall relate to the time of the Bargain and Sale, *Leonard* 4 *pt. n.* 18. *Popham's Caſe.* S.

27. *A man deviſed Socage Lands to his Brothers Son in Tail, to have the ſame at his Age of* 25 *years, and died, having a Daughter, the Nephew, after* 21 *years entred, and Levied a Fine, and then attained to the Age of* 25 *years, whether the Iſſue of the Deviſee was barred by the Fine?* Q.

It was the Opinion of the whole Court, that the Iſſue of the Deviſee was barred by this Fine, for the Heir in Tail, and the Heir in Fee, are all by the Statute of 4 *H.* 7. and it was holden, that this was not a Fine, which doth enure by way of Eſtoppel, but that it paſſeth the very Right, *Leonard* 3 *pt. n.* 304. S.

Q. 28. *Where, and in what Case is it, that a Fine shall be a Bar to a Woman in Dower, she having not pursued her Claim within Five years?*

S. In Dower against *Fitz. Hugh*, who Pleaded in Bar a Fine with Proclamations and Five years passed, after the Death of the Husband, of whose Seisin she demanded Dower. To which the Demandant said, that within the Five years, after the death of her Husband, she brought a Writ of Dower against the now Tenant, and delivered the same to the Sheriff, *&c.* But did not shew that the Writ was returned, upon which the Tenant did demurr in Law. It was holden by *Periam* Justice, that the Fine is not avoided by such manner of Claim, for the words of the Statute are; *(So that they pursue their Claim and Title by way of Action, or Lawful entry within the Five years)* but here the Demandant hath not pursued, *&c.* therefore she shall not be retained by the said Statute, *Leonard* 3 *pt. n.* 296. *Fitz. Hughs's Case.*

Q. 29. *Husband and Wife are Donees in special Tail, the Husband alone Levies a Fine of the Land, whether the Issue shall be barred?*

S. Husband and Wife Donees in special Tail, the Husband Levied a Fine of the Lands; in this Case it was holden, if the Proclamations pass in his Life time, or before the Wife, by her entry had avoided the Fine, the Issue should be barred; otherwise if the Husband had died, before Proclamation had passed, *Leonard* 4 *pt. n.* 41.

30.

30. *Tenant in Tail, Remainder to the King, Levied a Fine, had Iſſue and dies, whether the Iſſue in Tail was barred?* Q.

It was adjudged, that the Iſſue in Tail was barred, and yet the Remainder to the Queen was not diſcontinued; for by the Fine an Eſtate in Fee Simple, determinable upon the Eſtate in Tail paſſed to the Conuſee, *Leonard* 4 *pt. n.* 108. *Jackſon and Darcies Caſe.* S.

31. *An infant bargaineth and ſelleth his Land to another by Deed indented for a certain Sum of Money, and after within Age Levies a Fine to the Bargainee,* Come ceo, que il ad de ſon done, *whether he ſhall avoid the Indenture for non-age until he has reverſed the Fine by a Writ of Error?* Q.

It was held by all the Juſtices, that although the Indenture was void againſt the Infant, in reſpect of the thing, that had paſſed, yet the Deed indented was but voidable then, when the Fine was Levied upon it; It made the Bargain irrecoverable, unleſs it be reverſed by a Writ of Error; for the Indenture ſerves to declare the uſe, and direct the Fine, as the words of the Infant, *Daliſon's Rep. f.* 47. *pl.* 6. S.

32. *Whether the Record of a Fine remaining with the* Cuſtos Brevium *ſhall be amended, and made according to the Record, made and remaining with the Chirographer?* Q.

In a Formedon, the Tenant pleaded a Fine with Proclamations; the Demandant replied, *nul tiel Record*, and the truth of the Caſe was, that the Record of the Fine, which remained with the Chirographer did warrant the Plea; but that, which remained with S.

with the *Custos Brevium* did not wararnt it, and both these Records were shewed to the Court. And *Rhodes* Justice cited a Precedent 26 *Eliz.* where by the Advice of all the Justices of *England*, where such Records differ, the Record remaining with the *Custos Brevium* was amended, and made according to the Record, Remaining with the Chirographer, which *Windham concessit.* And afterwards the said Precedent was shewed, in which was set down all the proceedings, in the amending of it, and the Names of all the Justices, by whose direction the Record was amended, were set down in it; and that the said Precedent was written, and the amendment of the said Record Recorded, by the Commandment and Appointment of the Justices, *in perpetuam Rei Memoriam.*

And the Reason which induced the said Justices, to make such order is here written, because they took it, that the Note remaining with the Chirographer, *est Principale Recordum*, *Leonard* 3 *pt. n.* 23.

The

The Fourth Conveyance *by way of* Common Recovery.

Recoveries are, where for Aſſurances of Lands, the Parties do agree, that one ſhall begin an Action Real againſt the other, as though he had good right to the Land, and the other ſhall not enter into defence againſt it, but alledge that he bought the Land of *I. H.* who had warranted unto him, and pray, that *I. H.* may be called in, to defend the Title, which *I. H.* is one of the Cryers of the Common Pleas, and is called the *Common voucher.* This *I. H.* ſhall appear, and make as if he would defend it, but ſhall pray a Day to be aſſigned him, at the day he maketh default, and thereupon the Court is to give Judgment againſt him; which cannot be for him to looſe his Lands, becauſe he hath it not, but the party, that he had Sold it to, hath that who vouched him to warrant it.

Therefore the Demandant, who hath no defence made againſt it, muſt have Judgment to have the Land againſt him that he ſued, (who is called the Tenant,) and the Tenant is to have Judgment againſt *I. H.* to recover in value ſo much Land of his, where in truth he hath none, nor never will. And by this device grounded upon the ſtrict Principles of Law, the firſt Tenant loſeth Land, and hath nothing for it; but it is by his own

Agreement for Assurance to him, that bought it. Lord *Bacon* in his Tract, Intituled, *The use of the Law*, &c. *p.* 51, 52. *pr.* 1639.

I. *Observations.*

1. A Common Recovery is not good, where the Vouchee is within Age, and appears by Attorney, and not by Guardian; and being dead, they in remainder may bring Error, and good, for it shall not be tried by Inspection, *Cro. Eliz. f.* 739. *pl.* 13. *Holland* v. *Dauntzey.*

2. A Recovery of the Moyety of Land, is good for a third part, where he who suffered the recovery had but a third part of the Land Recovered, *Cro. Car. f.* 110. *Isham* v. *Morrice.*

3. A Common Recovery is a Record, and when it is pleaded, it must be pleaded entire And so of a Fine; but otherwise it is in the Case of a Feoffment, *Hobert's Rep. f.* 14. *Roll* v. *Osborn.*

4. If a man convey Land to me, and my Heirs with warranty, and I suffer a Recovery, without vouching my Feoffor, to the use of my self, and my Heires, yet I may vouch my Feoffor, as I might do before, for this is my old Fee Simple, *Hobert's Rep. f.* 27. *Roll* v. *Osborn.*

5. Abby Lands discharged, *quamdin in manibus proprijs*, are given in tail, and the Donee suffers a Recovery, which Bars the Reversi-

on

on, yet he ſhall pay Tithes, *Hobert's Rep. f.* 248. *Farmer* v. *Sherman.*

6. If Baron and Feme be Tenants in Special Tail, and the Baron only levy a Fine, and dies, the Feme upon Reentry is Tenant in Tail, and ſuffers a Recovery, which ſhall Bar the Reverſions, not the Iſſues in Tail, nor the Conuſee himſelf, after her death, *Hobert's Rep. f.* 259. *Duncombe* v. *Wingfield.*

7. Whether a Recovery is had, in which *Ceſtuy que uſe* in tail is vouched, and the Demandant recovers, there this ſhall bind the Iſſue in Tail, *Br. Feoffments al uſes* 56. *in Fine.*

8. If Tenant in Tail, Reverſion to the King, ſuffer a Common Recovery, this ſhall bind him, and his Iſſue, but not the King by the Common Law; ſee now by the Statute, it does not bind the Iſſue, *Br. Recovery in value* 31. *Br. Tail* 41. *in Fine, and Br. diſcontinuance* 32.

9. Tenant for Life, the Remainder over, or Tenant in Tail, Remainder over, is impleaded by a Writ of Entry in the Poſt, and he voucheth a Stranger, the Demandant recovers againſt the Tenant, and the Tenant over in value, this ſhall bind him in Remainder, for the Recompence ſhall go to him, in Remainder, *Br. Recovery in value* 28.

10. A Recovery againſt Baron and Feme, by Writ of Entry in the Poſt, where the Feme is Tenant in Tail, and they vouch over, and ſo the Demandant recovers againſt *B.* and *F.* and they over in value, this ſhall bind the Tail, and the Heir of the Feme, *Recovery in value* 27.

11. Baron and Feme, who is an Infant, ſuffers a Common Recovery by warrant of Attorney, this is an Errour, *Palmer's Rep.* 245. *Darcy* v. *Jackſon.*

12. A Common Recovery, ſuppoſeth a Recompence in value to all perſons, who loſt the Eſtate by the Recovery, *Stiles f.* 450. *Pilkington* v. *Bagſhaw. vid. infra Obſerv.* 16.

13. It is not Error in a Common Recovery becauſe the Summons bear *Teſte Subſequem* to the return of the *Dedimus*, *Raymond's Rep. f.* 60. *Winne* v. *Loyd.*

14. It is no Error in a Common Recovery, although it doth not appear, that there was not any warrant of Attorney for Appearance, *Raymond f.* 70, 96. *Winne* v. *Loyd.*

15. A Common Recovery at this day bars a Tenant in Fee Simple tho' there be no Tenant of the Freehold, *Raymond's Rep. Murray* v. *Eyton, f.* 323.

16. The reaſon of a Bar in a Common Recovery, is the intended Recompence, therefore if Tenant in Tail make a Feoffment in Fee, and the Feoffee ſuffer a Common Recovery, this bars not the Eſtate Tail, becauſe the recompence cannot go to the Eſtate Tail; but if the Tenant in Tail be vouched, then it is a Bar, *Raymond's Rep. f.* 29. *Plunket* v. *Holmes.*

17. An Eſtate Tail cannot be dockt, neither by Fine, or Recovery, where the Lands are of the Gift of the King, and the Reverſion in the Crown; but if ſuch Reverſion be granted out of the Crown, it may be deſtroyed by Fine, and Recovery, *Raymond's*

mond's Rep. 288. *Murray v. Eyton, vid. Supra Obſerv.* 8.

18. Since Common Recoveries have been ſo much in practice, and become the Common aſſurance of Mens Eſtates, they have been favourably conſtrued: A Manor in Reputation hath paſſed by the name of a Manor in a Recovery, *Finch's Caſe, Co. Lib.* 6. *and Dormer's Caſe, Co. Lib.* 5. And Common Recoveries have been admitted of an Advowſon, *Ventris* 2 *part. Sir John Otwayes Caſe.*

19. If *Ceſtuy que uſe* for Term of Life, Levy a Fine with Proclamations, there none is bound to make an Entry, or Claim; for this is no more than a Grant of his own Eſtate, which he may Lawfully paſs and no Forfeiture; the ſame Law it is for Tenant for Term of Life in Poſſeſſion; *Quære* hence, if he Levy it in Fee; for then it ſeems otherwiſe; But it is to be noted, that in the Reign of *H.* 8. a Recovery was ſuffered by one *Graſeley* of the County of *Suffolk*, by the advice of *Fitzh.* Sergeant, and others, and *Graſeley* was only *Ceſtuy que uſe* in Tail, and after *Graſeley* died without Iſſue, and his Brother recovered the Land in Chancery, for at that time it was taken, that a Recovery againſt the *Ceſtuy que uſe*, did not ſerve, but for Term of his own Life, wherefore it was nothing elſe but a Grant only of his own Eſtate, *Br. Feoffments al uſes* 48.

20. If Feoffees ſeiſed to the uſe of an Eſtate Tail, or other uſe, are impleaded

and ſuffer a Common Recovery to be had againſt them, upon a Bargain; this ſhall bind the Feoffees, and their Heirs, and *Ceſtuy que uſe*, and his Heirs; where the buyer, or Recoveror had no notice of the firſt uſe; and by *Fitzh.* this ſhall bind, altho' they have had notice of the ſaid uſe; for the Feoffees have in themſelves the Fee Simple veſted. *Feoffments al uſes 56.*

21. If a Common Recovery be Erroneous, and after a Fine is Levied, this will Bar the Error, *Rolls* 1 *pt. f.* 30. *Holland* v. *Lee.*

22. A Fine, and Five years ſhall bar a Writ of Error brought for the Reverſing an Erroneous Recovery, *Rolls* 1 *part f.* 37. *Benfield* v. *Bertlamew.*

II. Queſtions *with their* Reſolutions.

1. *A man recovers in a Writ of Entry in the Poſt, againſt Tenant in Tail, upon voucher and Recovery in value againſt* W. *the Common vouchee, and before Execution Sued, the Tenant in Tail dies, and his Iſſue Enters, whether the Recoveror may enter upon the Iſſue in Tail, or not?* Q.

It was the Opinion of *Fitz. Herbert* and *Baldwin*, that he may well enter upon the Iſſue in Tail; for the Iſſue cannot Falſify this Recovery, by reaſon of the Recovery in value, *Trin.* 28. *H.* 8. *Dyer f.* 35. *a. pl.* 28. S.

2. *Whether a Common Recovery againſt an Infant, be as a Common Aſſurance, not to hurt him?* Q.

By *Coke* Chief Juſtice, and his Companions it was reſolved, that a Common Recovery againſt an Infant was but as a Common Aſſurance, upon which an uſe may be averred, and a forfeiture of an Eſtate for Life, and this not to bind, or hurt him. *Bulſt.* 2. *pt. f.* 235. S.

3. A. *being Seiſed of the Manor of* S. *in* O. *and of divers other Lands in* O. *ſuffered a Common Recovery of the whole, and by Indenture, expreſſed the Uſes in this manner*, viz. *Of all his Lands and Tenements in* O. *to the uſe of his Wife for Life, the Remainder over*, &c. *And of the Manor of* S. *to the uſe of his youngeſt Son in Tail,* Q.

whether the Wife ſhall have any thing in the Manor of S. *in* O?

S. It was the Opinion of the whole Court, that altho' the Manor of *S.* was in O. yet the Wife ſhall have nothing therein; for the intent of the party was, that the Son ſhould have the ſame, and his Wife the Reſidue, and accordingly Judgment was given, *Leon.* 2 *pt. n.* 61. *Carter's Caſe.*

Q. 4. *A man made a Feoffment in Fee, to the uſe of himſelf for Life, and then to the uſe of his Eldeſt Son in Tail, and afterwards to the uſe of his right Heirs, not having at the time of the Feoffment any Son; afterward he ſuffered a Common Recovery, had Iſſue a Son, who died in the Life of his Father, having Iſſue a Son, and then he himſelf died; whether the Son, and the Heir of the Son can avoid this Recovery by the Statute of* 32 H. 8.

S. It was holden in this Caſe, that the Son and Heir of the Son, ſhould not avoid this Recovery by the Statute of 32 *H.* 8. for there was not any Remainder in him at the time of the Recovery had, but the Remainder then was in Abeyance; for then the Son was not born, and the words of the ſaid Statute are, *That ſuch Recovery ſhall be void, againſt ſuch Perſon, to whom the Reverſion,* or Remainder ſhall then appertain, *i. e.* at the time of the Recovery. And it was ſaid, that if Lands be given to *E.* for Life, the Remainder to B. in Tail, the Remainder to *C.* in Fee. *B.* dyeth his Wife with Child with a Son; a Recovery is had againſt *E.* with the Aſſent of *C.* and then the Son is born, he ſhall not be helped

ped by the Statute aforeſaid; for that the Remainder man was not in Eſſe at the time of the recovery, *Leon.* 3 *pt. n.* 193.

5. *A Reverſioner ſuffereth a Common Recoverie to uſes, whether his Heir can plead, that the Father had not any thing at the time of the Recovery?* Q.

It was agreed, that if he in Reverſion ſuffereth a Recovery to uſes, his Heir cannot plead, that his Father had not any thing at the time of the Recovery, for he is Eſtopped to ſay, that his Father was not Tenant to the *Præcipe*; and therefore it is a good Recovery againſt him by way of Eſtoppel, *Leon.* 4. *pt. n.* 373. *Duke and Smith's Caſe.* S.

6. *Whether there be a Diverſity between a Recovery to the uſe of Covenants and Agreements in Indentures; and a Recovery to any uſe in the Indentures, and what is it?* Q.

If Covenants and agreements are contained in Indentures, and not uſes, and it is covenanted by theſe Indentures, that *A.* ſhall recover againſt *B.* his Land in *D.* to the uſe of the recoveror, and his Heirs, and to the uſes of Covenants and Agreements in the Indentures, there if he recover, the Recovery ſhall be to the uſe of the Recoveror, and his Heirs, and not to the uſes of Covenants and Agreements in the Indenture, where no uſes are in the Indenture; but *e contra*, if uſes are contained in the Indenture, and it is Covenanted, that *A.* recover to the uſe of *A.* and his Heirs, and to the uſes in the Indenture, there the recovery ſhall go accordingly and ſhall be Executed by the Statute of 27 *H.* 8. *Br. Feoffments al uſes* 58. S.

7. *Te-*

Q. 7. *Tenant for Life, Remainder over in Tail, Tenant for Life is impleaded, and vouches him in Remainder, who vouches over one, that has the Title of Formedon, and ſo the Recovery paſſes by voucher, whether the Iſſue of him, that hath Title of Formedon can bring his Formedon, and recover againſt the Tenant for Life?*

S. It is held, that where Tenant for Life is, the Remainder over in Tail, and Tenant for life is impleaded, and voucheth him in remainder, who vouches over one, that has the Title of Formedon, and ſo the recovery paſſeth by voucher, there the Iſſue of him that has the Title of Formedon, may bring his Formedon and recover againſt the Tenant for Life, for the Recompence ſuppoſed, goes not to the Tenant for Life, and therefore he may recover; for his Anceſtor did warrant only the remainder, and not the Eſtate for Term of Life; wherefore the Tenant for Life cannot bind him by the recovery, for he did not warrant to him, and therefore in ſuch a Caſe, the ſure way is to make Tenant for Life, to pray in Aid of him in remainder, and both to joyn and vouch, him that has the Title of Formedon, and ſo to paſs the recovery, for there the recompence will go to both of them, *Br. Recovery on value*, 30.

Q. 8. *If a Common Recovery be to paſs at the Bar, and the Tenant is ready at the Bar, and voucheth to Warranty*, A. *for whom he is ready at the Bar to appear for the Vouchee by his Warrant of Attorney, whether in this Caſe*

S. *the Vouchee can appear by Attorney?*

It was holden, that the Appearance is meerly void; for in ſuch caſe the Vouchee ought

to

to appear in *propria perſona*, becauſe without Summons; but where Summons Iſſueth, and the ſame is entred upon the Roll, there may the Vouchee at the return appear in perſon, or by Attorney, at his Election; and this was the cleer Opinion of all the Juſtices, and alſo of the *Preignotaries*, *Leonard* 1 *part n.* 104.

9. *A. Tenant for Life, the Remainder to the uſe of B. in Tail, Remainder to C. in Tail, the Remainder to the right Heirs of D. provided that A. ſhall have power to make Leaſes for years, to commence after the death of B. without Iſſue, whether B. can bar this Leaſe by a Common Recovery?* Q.

Hales Chief Juſtice held, that *B.* may bar this Leaſe by a Common Recovery, altho' this ariſe precedent to the Eſtate Tail, becauſe it is a continuance of the Eſtate of *B. Raymund's Rep.* 236. *Benſon* v. *Hodſon.* S.

10. *Indentures guiding the uſes of a Recovery, of which the Seals were broken off by an Accident; whether allowable for good?* Q.

An Indenture made to guide the uſes of a Recovery Subſequent, but the Seals were torn from the Deed; but becauſe this was done by a petit Garſoon as it was proved, and the Seals were annexed, and compared alſo, the Razures of the parts agreed; it was admitted as well to guide thoſe uſes, as if it had been Perfect. *Latch's Rep* 226. *Anonymus.* S.

11. *One makes a gift in Tail, and reſerves a Rent to him, and his Heirs, the Tenant in Tail makes two, to be Tenants of the Freehold of the Land ſo given, againſt whom a Præcipe was brought; they vouch the Tenant in Tail, who vou-* Q.

cheth

cheth over the common Vouchee, and ſo a Recovery is paſſed; after which he who has intereſt in the Reverſion and Rent, before the Recovery had diſtreins, upon which a Replevin is brought; whether the Rent continues after the Recovery?

S. It was ſaid that the Rent was not taken away, or deſtroyed by the Recovery; for the Rent iſſues out of the Land in Tail, and continues during that Eſtate; and the Court held, that the Rent was not determined, nor taken away, *Anderſon* 2 *pt. n.* 92. *f.* 170. *vid.* 1 *pt. Qu.* 33. *p.* 97.

Q. 12. *What ſhall be good to ſtop a Common Recovery?*

S. Sir *Thomas Gower* had upon a Commiſſion, made an Attorney, in order to ſuffer a Common Recovery this Term (*viz. Mich.* 1 *W. and M. in Co. B.*) which was done the laſt Aſſizes at *York*. And the Court was moved in behalf of the Heir in Tail, to ſtop the paſſing of the Common Recovery, and ſeveral Affidavits were produced to ſatisfie the Court, that Sir *Thomas Gower* (ſince the ſaid Aſſizes) dyed in *Ireland*, and the Court being ſatisfied of the Truth thereof, did ſtay the paſſing of the Recovery; and ſaid, if it ſhould paſs it would be Erroneous, *Ventris* 2 *pt.* 90. *Sir Thomas Gower's Caſe.*

Q. 13. *In what Caſe a Common Recovery may be aided by the Court of Common Pleas, upon a Writ of Error brought?*

S. A Common Recovery was ſuffered, and the Writ of Entry was not filed, and upon this a Writ of Error was brought; and *Hitcham* moved, that it may be examined, whether any Writ was filed, or not. But the Court deny-

denyed it; But if it can appear by Record, that a Writ was filed, then they will consider, whether a new one shall be Filed or not. And they said, that if a Recovery be exemplified by the Statute of 23 *Eliz. cap.* 3. although any part thereof be lost, yet it is aided, *Littleton's Rep. f.* 299. *Tit Common Recovery.*

14. *Tenant in Tail discontinues, and takes back another Estate, and suffers a Recovery upon Voucher, and recovers over in value, and dies, whether this Recovery can bar the Issue in Tail?* Q.

It is held, that if Tenant in Tail makes a discontinuance, and takes back another Estate to himself, and then suffers a recovery to be had, upon voucher, and recovers over in value, and dies, that this same Recovery shall be no Bar to the Issue in Tail; for the recompence shall go only in lieu of his Estate which the Tenant had at the time of the Recovery, which was another Estate, and not the first Estate Tail; and therefore the recompence shall not go in lieu of the former Tail, whereof the Tenant was not Seised at the time of the recovery had, and so no Bar; but if Tenant in Tail discontinue, and a man recovers against the discontinuee, and he vouches the Tenant in Tail, and so a Recovery is had, this shall bind the Tail, for the Voucher shall bind all Titles, which the Vouchee had in Right, or otherwise, 12 *E.* 4. 15. S.

The Fifth Conveyance *by way of* Exchange.

Littleton in his Tenures gives us this description of an Exchange; if there be two men, and each of them is seised of one Quantity of Land in one County, and the one granteth his Land to the other in Exchange for the Land, which the other hath, and in like manner the other granteth his Land to the first Grantor, in exchange for the Land, which the first Grantor hath; In this Case each may enter into the others Land, so put in exchange, without any Livery of Seisin. *Lib.* 1. *c.* 7. *Sect.* 62.

I. *Observations.*

1. In Exchange, both the Estates must be equal. *Noy* in his Treatise of the grounds of the Law, *cap.* 32. *p.* 62.

2. The Equality in Lands according to *Littleton*, is threefold, *viz.*

1. Equality in Value.
2. Equality in quantity of Estate, given and taken.
3. Equality in Quality, or manner of the Estate given and taken.

But

But as *Littleton* ſaith, Equality in value of Lands in exchange is not requiſite, neither Equality in the Quality, or Manner of Eſtate; but Equality of the quantity of the Eſtate is required; for if one Willeth, and grants the other ſhall have his Land in Fee Tail, for the Land, which he hath of the Grant of the other in Fee Simple, altho' the other agree to this, yet this exchange is void, becauſe the Eſtates be not equal in reſpect of the quantity of the Eſtate.

3. There muſt be two Grants, and in every Grant, mention muſt be made of this word *Exchange*, *Noy cap.* 32. *Littleton Sect.* 65. *in fine*, 15. *E.* 4. 3. *Br. Exchange* 12, *and* 5. 19 *E.* 4. 19 *and* 20.

4. It may be done without Livery of Seiſin, if it be in one Shire, or elſe it muſt be done by indenture, and by this word *Exchange*, or elſe nothing paſſes without Livery of Seiſin, *Noy cap* 32.

5. Exchange importeth in the Law, a Condition of Re-entry, and a warranty over, and recompence of the other Land that was given in Exchange, *Noy*, *cap.* 32.

6. An Aſſignee cannot re-enter, nor vouch, but rebate, *Noy*, *cap.* 32.

7. An Exchanger may reenter upon an Aſſignee, *Noy cap.* 32.

8. The ſame condition defeated in part, is defeated in the whole, and the ſame Law is in partition. *Noy cap.* 32. *Tit. exchange*,

9. A Husband may be Seiſed, in his Demeſn as of Fee abſolutely, yet the woman ſhall not be endowed, as ſhe ſhall not be endowed, both of the Land given in exchange,

change, and of the Land taken in exchange, and yet the Husband was ſeiſed of both, but ſhe may have her Election to be endowed of which ſhe will, *Coke in his Comment on Littleton. Sect. 36. f. 31. b. 6 E. 3. 50. f. n. B.* 149.

10. If *I. S.* exchange Lands with *T. K.* and *I. S.* entreth, but *T. K.* taketh a Wife and dieth before Entry, his Wife ſhall not have Dower of the Lands exchanged, *Womans Lawyer, Lib. 2. Sect. 58. p. 93.*

11. An Infant maketh an Exchange, and has nothing but ten Shillings for Twenty Shillings; yet if he agrees to it, at his full Age, it is a good exchange, 12 *H.* 4. 11. 21 *H.* 6. 24, and 25. *Br. Exchange* 4.

12. If two exchange Land for Land, *Sc.* Twenty Acres for Twenty Acres, and one of them enters into one Acre of his fellow exchanger, this ſhall diſſolve the entire exchange; but it ſeems, that this is intended, where the party was within Age, or the like, for otherwiſe one cannot enter upon the other, 4 *H.* 7. 6.

13. One Grants [*Terram pro Terra*] this is neither a Condition, nor Exchange, *Sans* parol exchange, *Rolls* 1 *pt. f.* 122. *Hooper* v. *Andrews.*

14. Exchanges are made of ſuch things, and of ſuch Eſtates, as may paſs by Livery of Seiſin, *Perkins Sect.* 244. *Tit. Exchange.*

15. If the things exchanged are in the ſame County, the exchange is good in Law, without any Deed, *Perkins Sect.* 244.

16. If

16. If the Lands, of which the exchange is made are in ſeveral Counties, then the Exchange muſt be by Deed indented, if the Eſtate, which the parties take by the Exchange be of an Eſtate of Freehold, or Inheritance, *Perkins Sect.* 244. *Tit. Exchanges*, 9 *E.* 4. 38. *Br. Exchange* 6.

17. If the Eſtate in the exchange be for years, then the Exchange is good, and effectual without any Deed, notwithſtanding that the Lands of the one, which is taken in exchange, be in one County, and the Lands of the other, which is taken in Exchange, be in another County, *Perkins Sect.* 244.

18. If an exchange be of a Reverſion, it is not good, unleſs it be by Deed; and the ſame Law it is, of Seigniories, Rents, Advowſons, and the like, that lie in Grant, but otherwiſe it is in the Caſe of Partition, for there the Heir is in by Deſcent from the Anceſtor, and as Heir, and not by Partition as a Purchaſer, 28 *H.* 6. 2.

19. *I. S.* is Seiſed of a Manor, to which he hath common Appendant, or Appurtenant; and *T. K.* is Seiſed of a Manor, unto which he hath a Villein Regardant, and both Manors are in one County, and an exchange is made between them of the Manors, the Common ſhall paſs unto the one with the Manor, and the Villein unto the other with the Manor without Deed, *Perkins Sect.* 249.

20. *I. S.* has an Office, unto which Land appertaineth, and *T. K.* has a Rent iſſuing out of the Land of a Stranger, and all the Land is in one County, and the Office is to

be uſed, and exercized in the ſame County, and exchange thereof is taken betwixt them, it behooveth that ſuch an Exchange be by deed indented, 9 *E.* 4. 39.

21. Annuities or ſuch like, which charge the perſon only, and do not concern Lands or Tenements, cannot be exchanged for Lands, or Tenements, *Co. Lit. f.* 50. *b.*

22. It has been holden, that an exchange of Land for a Chamber is good in Law, 9 *E.* 4. 38. *and* 5 *H.* 7. 9.

23. If Baron and Feme and others, make an Exchange, ſo that the part of the Feme is not equal, the Baron dies, the Wife occupies her part ſhe ſhall be bound, but otherwiſe it is, if ſhe waives the Poſſeſſion, and not occupy, 21 *H.* 6. 24, *and* 25. *Br.* Exchange 4.

24. An Exchange is good, Maugre the things be not of the ſame nature as Land for Rent, or Rent for Common, 19 *E.* 4. 19 and 20. *Br. Exchange* 5.

25. An Exchange may be made between Spiritual and Temporal things, as a man may give certain Land to a perſon and his Succeſſors, to be quit of Mortuaries, and Tithes, 9 *E.* 4. 19, *and* 20. *Br. Exchange* 5.

26. No Exchange of Land can be complete and perfect, till the Exchangers have mutually entered into one anothers Lands; and then 'tis perfect, if the Eſtates be equal, 9 *E.* 4. 38.

27. If a man exchangeth his Manor in poſſeſſion with *I. S.* for the Manor of *M.* which he ſhall have after the Death of his Father, this is a void Exchange, 9 *E.* 4. 38 *Br. Exchange* 6.

28.

28. An exchange is made in Fee bewixt two perſons of a Manor, whereof one Moyety is Tail, and the other Moyety is Fee Simple Land, for another Manor, Tenant in Tail dies, and the Iſſue in Tail diſagrees to the Exchange, and enters into the whole, this is now a void exchange in all, 13 *E.* 4. 3.

29. A permutation between two Parſons is void, if one of them does reſign, after the other is Dead; contrariwiſe it is between two Gardeins that have a Common Seal, and make a Change by Deed *ſub Communi Sigillo*, 2 *H.* 4. 5.

30. If a perfect Exchange be made between two, ſeiſed in Fee, there if one enters upon his Land, put in Exchange, yet the other may not likewiſe enter into that, which was his Land, but he muſt bring an Aſſize againſt the other; for that it is a thing executed and not Executory, 15 *E.* 4. 3.

31. If one be ſeiſed (upon an Exchange) by a defeaſible Title, by which he that has Title enters, or recovers, there the other may reenter in his firſt Eſtate; ſo where one has Fee and the other Fee Tail, or ſeiſed in *Jure uxoris*, &c. 15 *E.* 4. 3.

32. Baron and Feme ſeiſed in *jure uxoris*, make an exchange, the Baron dies, and the Feme agrees to the exchange, ſhe ſhall be bound by it; and ſo when Tenant in Tail makes an exchange and dies, and the Iſſue agrees to the exchange, as by entring into the Land taken in exchange, or the like, he is bound for ever; but yet it ſeems, that if the Husband makes an exchange without

his Wife, there ſhe ſhall not be bound by the Entry or Agreement, no more than by the Acceptance of Rent upon a Leaſe made by the Baron alone, for thoſe things are void againſt her, where ſhe is not party, and voydable, where ſhe is a party, *9 H.* 6. 52.

II. Queſtions *with their* Reſolutions.

Q. 1. *An Exchange is taken betwixt two perſons, of two Acres of Land by deed, and in the Habendum, a Recital mentioned, that every one ſhall have the Acre put in Exchange, with other Acres, to have in* Excambium prædict. *which were not in the Premiſſes of the Deed, whether theſe words will nullifie, or make void the Exchange according to the Premiſſes?*

S. It Anſwered, that notwithſtanding that exchange be taken between two Men, or between two ſingle Women of two Acres of Land by Deed, and in the *Habendum* of the ſame Deed it is recited, that every one ſhall have the ſaid Acre put in Exchange, with divers other Acres, to have in *Excambium prædict.* Which were not recited in the premiſſes of the Deed. Theſe words ſhall not alter or make void the Exchange recited, and rehearſed in the Premiſſes of the Deed, *Perkins Sect.* 251. *Tit. Exchanges.*

Q. 2. *An Exchange is made by paroll, between two men in Fee, of two Acres of Land, both which are lying in one County, and before their Entry by force of the Exchange, Indentures are made*

made between them of the ſame Acres in Fee; without any mention of the word Exchange in the indentures, and no Livery of Seiſin is made of the Land, but either delivereth to other the Indentures as his Deed, and either entereth into others Land, contained in the Indentures; the Queſtion is what Eſtate theſe two perſons have in each others Land?

It is held, that either of them holdeth the Land at the Will of the other, and ſhall not take the Land by force of the Exchange, for the Indenture doth conclude them ſo to claim the Land, *&c.* but if Livery of Seiſin had been made unto either of them, according to the Purport of the Indentures, then the indentures ſhall take as Feoffments, *M.* 45 *E.* 3. 20 *and Trin.* 8 *E.* 3. 15. *Perkins Sect.* 254 *Tit. Exchanges.* *S.*

3. *I. N. being ſeiſed of Land to which* I. S. *hath Right of Action, gives unto* I. S. *Tenements in Exchange for a Releaſe of his Right; whether this be a good Exchange or not?* *Q.*

It hath been held, that if I be Seiſed of Land to which *I. S.* hath right of Action, and I give unto him Tenements in Exchange for a Releaſe of his Right, that it is a good Exchange, becauſe I may purchaſe ſuch releaſe for my Money, and by the ſame reaſon I may give Lands or Tenements in exchange for the ſame Releaſe, and alſo I have equal right by the Releaſe unto the Eſtate, which I give, and it ſhall be a good advantage unto me to have it by Extinguiſhment, as otherwiſe, 16 *E.* 3. *Exch.* 2, *M.* 9 *E.* 3. 56. *S.*

Q. 4. A. *diſſeiſes* B. *of his Land*, B. *the Diſſeiſee releaſeth his Right unto* A. *the Diſeiſor, in exchange for another piece of Land, whether a good exchange?*

S. If Diſſeiſor and Diſſeiſee be, and the Diſſeiſee releaſeth his Right unto the Diſſeiſor in exchange for another Acre of Land, this is adjudged a good Exchange, but if the Diſſeiſee had granted his Right unto a Stranger who had nothing in the Land exchanged for one Acre of Land, this Exchange had not been good, for the Stranger took nothing by the Grant, 3 *E.* 4. 20 *Exchange* 4. *Perkins Sect.* 271.

Q. 5. *Diſſeiſor and Diſſeiſee are of one Acre of Land, and the Diſſeiſor Exchangeth this ſame Acre of Land with the Diſſeiſee, for another Acre of Land whether this be a good Exchange?*

S. It is adjudged, that this Exchange is not good, unleſs it be by Deed indented, or by Fine, *&c. Perkins Sect.* 273. *Tit. Exchanges.*

Q. 6. *If two men Exchange Land by Deed, or without Deed, and neither enter, whether they can make a Revocation of this Exchange by Paroll?*

S. If two Exchange Land, by Deed or without Deed, and neither enter, they may make a Revocation, or Diſſolution of the ſame Exchange, by mutual conſent, ſo it be by Deed, but not by Paroll, for as much as the makeing of an Exchange needeth no Deed, becauſe it is to be perfected by Entry, which is a Ceremony notorious in the nature of a Livery; but it cannot be diſſolved but by Deed, becauſe it diſchargeth that, which is but little, *F. n. Br.* 36. 13 *H.* 7. 13, 14. *Lord Bacon*

Bacon in his Collection of ſome principal Rules of the Laws of *England*; *Regula* 20 *p.* 72. *Edit.* 1639.

7. *Two men make Exchanging of two Acres Executed in Fee, one of them dyeth, his Son takes a Wife, and entereth, and the other party being impleaded, voucheth the Son, which entereth into warranty, ſo that the Tenant recovereth in value the Acre, which he delivered in exchange; whether the Sons Wife ſhall be endowed of this Acre?* Q.

If Father and Son be, and the Father is Seiſed in Fee of one Acre of Land, and exchangeth the ſame Acre for another Acre with a Stranger in Fee, and the Exchange is Executed, and the Father Dyeth, and the Son takes a Wife, and enters into the Acre taken in Exchange by his Father, and the party to the Exchange, who Surviveth is impleaded of the Acre taken in Exchange by him, and Voucheth to Warranty the Son, who entereth into the Warranty, and loſeth, *&c.* And the Demandant hath Execution againſt the Tenant, and the Tenant over in value againſt the Vouchee of the Acre, which the Tenant put in exchange unto the Father of the Vouchee, *&c.* and the Vouchee dyeth, his Wife ſhall not have Dower of this Acre put in Execution, becauſe that the Recovery in value ſhall have relation unto the time of the Exchange made; which was made before the Title of the Wife to the Dower, and ſo the poſſeſſion of the Husband is avoided by an Elder Title, before the Marriage, 4 *E.* 3. 52. 15 *E.* 3. *Dow.* 129. *Perkins* S.

Sect. 309. *Tit. Dower, and the Womans Lawyer Lib.* 2. *Sect.* 63. *p.* 103.

Q. 8. I. S. *and* I. N. *are infeoffed of one Acre of Land, to have and to hold the ſame Acre to them, and to the Heirs of* I. N. *and* I. D. *gives to them another Acre of Land to them in Fee in exchange for the ſame Acre, of which they are infeoffed as aforeſaid; whether this be a good Exchange in Law, or not?*

S. It is ſaid, that this is no good Exchange, but for the Moyety, which appertaineth to *I. N.* becauſe that he hath Fee in the Moyetie of the Acre, whereof he was infeoffed, executed to ſuch intent, or to put and veſt the ſame in another perſon by Alienation, that is to ſay, by Feoffment, Exchange, *&c.* and as to the Moyety, which appertaineth to *I. S.* the exchange is not good, becauſe he departs but with the Freehold, *&c.* and he is to take a Fee Simple in the other Land, *&c.* But againſt this it may be ſaid, that the Exchange is good for all, becauſe that the Fee Simple of the whole Acre of *I. S.* and *I. D.* was in *I. D. &c.* And when *I. S.* and *I. D.* joyn in Exchange of the ſame Acre, the whole Acre with the Fee ſhall paſs to *I. D.* ſo that he hath a Fee Simple Executed in the ſame Acre, and *I. S.* and *I. N.* have like Eſtate executed in the Acre of Land, which *I. D.* gave in Exchange unto them, as they had in the other Land, and ſo the Eſtates of the parties in the Exchange are Equal. And alſo it may be ſaid, that in the ſame Caſe the exchange is void in all, for it is argued before that the Exchange is void

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for the Moyety unto the ſaid *I. S.* And when it is void in part, it is void in all; as to that it may be ſaid, that this Reaſon is to take effect, where the Exchange is made of things which are entire, *Perkins Sect.* 277, *and* 278. *Tit. Exchanges.*

9. *An Exchange is made in Fee of Lands in one County, betwixt two men by Paroll; before an Entry, as to the point of Exchange either of the parties deliver Seiſin of the Land to the other, whether it ſhall take effect according to the Livery, or as an Exchange?* Q.

It is ſaid, If an Exchange be made in Fee of Lands in one County, betwixt two men by word, and before their Entry, by force of the Exchange, either of them deliver Seiſin of the Land unto the other, it takes effect according to the Livery of Seiſin, and not as an exchange. *Tamen Quære*; for where either enters into the other Land to take Livery of Seiſin, they are preſently Seiſed by force of the Exchange, for the Entry of either of them was Lawful in the others Land, which was exchanged by force of the Exchange; ſo that before Livery of Seiſin to them made, they were Seiſed in Fee by force of the Exchange, and a man cannot take Livery of Seiſin of Land, whereof he himſelf is Seiſed, *&c.* But if there were only a Speech betwixt them of Exchange, but the Exchange was not made, then it ſhall be otherwiſe, *Perkins Sect.* 255. S.

10. *Speech is had betwixt* I. N. *and* I. S. *for the making an Exchange of Land, and to that end, either of them levy a Fine unto the other of this Land, without any mention of Exchange in* Q.

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the Fine, whether it ſhall take any effect as an Exchange?

S. If Speech be betwixt two men to make Exchange of certain Land, and either of them Levy a Fine unto the other of the ſame Land, of which the Speech was, without any word of Exchange in the Fine, it doth not take effect as an Exchange; becauſe there wanteth the word of Exchange: But it is ſaid, it is not uſed to have words of Exchange in a Fine, *Perkins Sect.* 256. *Tit. Exchanges.*

Q. 11. *Lord and Tenant by Fealty, and* 12 *pence, the Lord doth exchange his Seigniorie with the Tenant for the Tenancy, and* e converſo, *by Deed indented, whether ſuch an Exchange be good, or not?*

S. Some ſay, it is not good, becauſe that immediately, upon the delivery of the Deed, the Seigniory is extinguiſhed in the Tenancy, ſo as the Lord ſhall have the Tenancy, and the Tenant ſhall have nothing for the Tenancy. But this Argument may be anſwered in this manner, that is to ſay, that the Lord granted his Seigniory unto the Tenant by Deed upon Condition; and in the ſame Caſe, if the condition be broken, he ſhall have his Seigniory back again. And Tenant for Life may grant his Eſtate by Deed indented upon condition to his Leſſor, *&c.* In the ſame manner it is of a Seigniory granted in exchange; for every Exchange comprehends in it a Condition. And ſo ſhall it be of an Exchange by Deed indented of Land, and Rent iſſuing out of the ſame Land. *Perkins Sect.* 261. but if a Manor

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or Land be given unto me, and I in exchange for the ſame Manor, or Land grant unto my Donor a Rent, iſſuing out of the ſame Manor, or Land; it is not available to take effect as an Exchange, 9 *E.* 4. 21. *and Perkins Sect.* 262. *Tit. Exchanges.*

12. *Three Acres of Land, to which an Advowſon is appendant, are given in Exchange by* I. N. *to* I. S. *for a Chamber aſſigned by the ſaid* I. S. *at the Election of* I. N. *and* I. S. *Aſſigns to* I. N. *two Chambers,* viz. *An upper, and a lower, and* I. N. *chooſes to have the upper Chamber, and enters therein, and* I. S. *enters into the Land; whether this Exchange, which is uncertain in the beginning, be good in Law?* Q.

In a *Quare Impedit*, an Exchange was made, betwixt a Prior ſeiſed of 3 Acres of Land, with an Advowſon appendant in Fee, with the Maſter of *E.* for a Chamber of *N.* to be aſſigned by the Maſter, at his Election, to the ſaid Prior, and his ſucceſſors in *D.* and the Maſter ſhews two Chambers to the Prior, *Sc.* an upper, and a lower Chamber, and he makes choice of the upper, and enters into it, and the other entred into the three Acres, and it was held, that the Exchange was good, notwithſtanding, that it was uncertain in the Commencement, *Sc.* That the Prior was to have one Chamber of two, which ſhall be Aſſigned to him by the Maſter, and ſo the Chambers are not known, until the Maſter Aſſigns them, and the Prior makes an Election of one of them: But when one of them is Aſſigned, and the other chooſes one, then this S.

this renders the exchange good and perfect. So ſhall it be, if I give my Manor of *Sale* in Exchange to *I. N.* for his Manor of *Dale*, or for his Manor of *Down*; and if Exchange be made betwixt me and *I. N. viz.* that after the Feaſt of *Chriſtmas* *I. N.* ſhall have my Manor of *Dale* in Exchange for his Manor of *Sale*, it is a good Exchange, and either of them may enter into the others Manor, after the Feaſt of *Chriſtmas*; but if I give unto *I. N.* my Manor of *Dale* in Exchange for his Manor of *Sale*, which he ſhall have after the death of his Father, by Deſcent, as Heir unto his Father, and his Father be Living at the time of the Exchange it is adjudged a void Exchange, 9. *E.* 4. 38. *Br. Exchange* 6. *and Perkins Sect.* 264. 265. *Tit. Exchanges.*

The

The Sixth Conveyance *by way of* Releaſe.

The Author of the Treatiſe, Intituled *Fleta*, gives this deſcription of a Releaſe; *Charta de quieta Clamantia eſt, ut Si petens pure remiſerit, & quietam clamaverit terram tenenti, quam idem petens petijt, ut jus ſuum. Lib.* 3. *cap.* 14. *n.* 1. And by that moſt Excellent and Learned Expoſitor of the Law, namely, *Noy*, this ſort of Conveyance (termed by *Britton Chartre de quite Clamaunce cap.* 39.) is defined thus; a Releaſe is the giving or diſcharging of a Right, which a man hath, or claimeth againſt another, or out of, or in his Lands. His Tract of the principal Grounds of the Law, *cap.* 37 *p.* 75.

I. *Obſervations.*

1. A Releaſe made by him that at the time of the Confection thereof, had no Right, is void in Law; If a Right accrues afterwards, unleſs it be with warranty, and then it ſhall bar him of all Right, that ſhall come to him, after the warranty made; and therefore a Releaſe of the Heir in the Life of his Anceſtor without a warranty ſhall not be a Bar, after the Death of his Anceſtor 11 *H.* 4. 33. *Br. Releaſes.* 10. *Noy cap.* 37. *of Releaſes.* 19 *H.* 6. 62.

2. *A*

2. A Releaſe made to him, that at the time of the Releaſe, had nothing in the Lands, is a nullity; it behoveth him to have a freehold, or a poſſeſſion, and privity; and therefore if a diſſeiſor leaſeth Lands to *I. N.* for years, and the Diſſeiſee doth releaſe to the Termor all his Right, this will be void, for that it is but a Chattel, and there wants Privity, 409 *E.* 3. 28. *Br.* Releaſes 92.

3. A Releaſe made to a Leſſee for years, before his Entry, is null, and void for want of Poſſeſſion, 15 *H.* 7. 14. 16 *H.* 7. 4. And therefore if a man makes an Indenture of Leaſe to *I. S.* in *July*, *Habendum* the Land from the Feaſt of *Michaelmas*, next for Term of Nine years, a Releaſe to the Leſſee before *Michaelmas*, of all his Right, is void, for he cannot have poſſeſſion before the Feaſt of St. *Michael*, 22 *E.* 4. 37.

4. If a Man Leaſeth Land for Term of Life, Rendring Rent, and after he releaſeth part of the Rent, this is good, and the Reſidue of the Rent, is not Extinct, 9 *E.* 3. 8.

5. A Man has a Rent charge out of twenty Acres, and Releaſes all his Right in one Acre, this ſhall extinguiſh all the Rent charge, 34 *Aſſ. pl.* 15. *Br. Releaſes* 85.

6. A Releaſe of all manner of Actions does not toll, or take away an Entry; as if a man be diſſeiſed, and releaſeth all Actions, yet he may well enter 19 *H.* 6. 3.

7. A Diſſeiſor makes a Feoffment in Fee to the uſe of a Stranger, a Releaſe given by the Diſſeiſee to the Diſſeiſor, or to *Ceſtuy*

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que uſe is void, for there is neither Privity nor Poſſeſſion, 9 *H.* 7. 25.

8. A Releaſe made by him in Remainder in Fee to the Tenant for Life, and his Heirs, is a good Releaſe; and ſhall be a Bar to the Lord in an Action of Waſt, againſt Tenant for Life, after the death of him in Remainder without Heir, where 'tis ſuppoſed the Fee to be Eſcheated, 3 *H.* 6. 2.

9. If the King pardon *Omnimoda Demanda*, yet the Inheritance is not pardoned, *Quia Rex &c.* But in the Caſe of a Common perſon, Rent, Right of Entry, and every thing that is implied therein, is releaſed and determined, contrary in *Caſu Regis*, 6 *H.* 7. 15.

10. A Feoffment in Fee made by a Diſſeiſor upon condition, the Diſſeiſee releaſeth to the Feoffee, then the Condition is broken, the Diſſeiſor may very well enter, Maugre the Releaſe, becauſe the Condition is an Eſtoppel to the Feoffee, 9 *H.* 7. 25.

11. A Leaſe is made of Land to *I. N.* at Will, and after the Leſſor makes a Releaſe unto him of all his Right, this is a good Releaſe; by reaſon of the Privity that is betwixt them; but if I ſuffer a man to occupy at my Will, without a Leaſe, and then I Releaſe to him all my Right, this Releaſe is void, for want of Privity, 7 *E.* 4. 27.

12. If a man releaſeth to *I. S.* Yeoman, whereas he ought to be ſtiled Gentleman, all Actions, the Releaſe is good in Law; and the Addition void; otherwiſe the Law is, in Caſe of Dignities, as Knight, Baron, Earl, Duke and the like, becauſe theſe be parcels of their Names, 21 *E.* 4, 72.

13.

13. A Man Leaſeth Lands for Term of Life, the Remainder over in Tail, and after he in Remainder releaſes all his Right to the Tenant for term of Life, and his Heirs, this is but only during the Life of the Releaſor, by reaſon of the Entail, 43 *Aſſ. pl.* 45.

14. *I. S.* Seiled of Lands in Fee, makes a Leaſe for Term of Life, and after grants the Reverſion to *I. B.* for Term of his Life; a Releaſe of all his Right to the ſaid *I. B.* and his Heirs of this Reverſion made by the Leſſor, is good although there be a Meſn Eſtate for Term of Life, 34 *Aſſ. pl.* 15. *Br. Releaſes* 85.

15. Baron and Feme purchaſe in Fee, and after they make a Leaſe for years by Indenture, and then the Baron Releaſes to the Leſſee, and his Heirs, this is no diſcontinuance, and yet this gives the freehold to the Leſſee, during the Life of the Baron, 29 *H.* 8. *Br. Releaſes* 81.

16. A Releaſe made to another, and the Releaſor delivers it to *I. N.* for to deliver it to the party, this Releaſe takes not Effect, till the Agreement of him, that is to have it; for *I. N.* is no other than a Servant of him, that made the Releaſe; but contrary it ſeems; if *I. N.* had been the Servant, and Factor of him, to whom the Releaſe is made, 8 *H.* 7. 13.

17. Two Coparceners are; one of them enters into the Lands, in the name of both, and the other releaſeth to her, this ſhall countervail an Entry, and Feoffment, and 'tis good Cauſe of voucher, but *e contra*, where

where one of them enters in her own name only into all, and claimeth to her ſelf alone, and the other Releaſes to her, then it is no other than an Extinguiſhment of the Right, and no making of an Eſtate, 21 *E.* 3. 27.

18. A Man cannot Releaſe upon a Condition, nor for a time, nor for part; But either the condition is void, and the time is void and the Releaſe ſhall enure to the party, to whom it is made, for ever, *Noy cap.* 37. *f.* 76. 13 *E.* 3. *Fitzh. Br. Releaſes* 96. *vid. Infra. Queſtion* 9.

19. A Releaſe to charge an Eſtate ought to have theſe words, Heirs, or words to ſhew what Eſtate he ſhall have, *Noy cap.* 37. *f.* 76.

20. If their be twenty Diſſeiſors one after another, and the Diſſeiſee releaſeth to the laſt Diſſeiſor, this ſhall Extinguiſh all the mean Titles of the other Diſſeiſors, for when the entry of a man is Lawful, and he releaſeth to him, that is by Tort, and without Title, *ut Supra*, ſuch a Releaſe ſhall amount to an Entry, and Feoffment, *Br. Releaſes* 92.

21. Two Tenants in Common make a Compoſition to preſent by turn to an Advowſon and after one releaſeth to the other all his Right in the Advowſon, it is a good Releaſe, and that by reaſon of the Privity of the turn. 39 *E.* 3. 37.

22. A Man makes a Leaſe for Life, the Remainder over for Life, and after he releaſeth all his Right, to him in Remainder and to his Heirs, he gaineth the Fee by

this Releaſe; but then he cannot have an Action of Waſt againſt the Tenant for Term of Life, without Attornement, 48 *E.* 3. 16.

23. Three perſons are Seiſed in Fee joyntly, and do make a Leaſe for Term of Life, and after two of them Releaſe all their Right to the third; this is a good Releaſe and he ſhall maintain an Action of Waſt Solely, 46 *E.* 3. 17.

24. A Releaſe made to him, that hath a Reverſion or Remainder in Deed, ſhall ſerve, and help him that hath the Frank-Tenement; ſo ſhall a Releaſe made to a Tenant for Life or Tenant in Tail, inure to him in the Reverſion, or Remainder, if they ſhew it, and ſo in Treſpaſſors, and Feoffees, but not to Diſſeiſors, *Noy cap.* 37. *p.* 76, 77.

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II. Queſti-

II. Queſtions *with their* Reſolutions.

Q. 1. *A Man made a Leaſe for years, rendring Rent, and upon payment of the Rent, the Leſſor made an Acquittance, by a Releaſe of all Actions, Duties and Demands from the beginning of the World to the day of the Date, whether the Rent to come were releaſed by it?*

S. It was reſolved by the Court, that ſuch a Releaſe will diſcharge the Rent to come; for this word [*Demand*] is the moſt large and ample word in a Releaſe, that may be, *Popham's Rep. f.* 136. *Wooton* v. *Bye.*

Q. 2. *A Leaſe is made for term of years, the Remainder for Life, and the Remainder over to another for term of Life, and he in Reverſion by his Deed, doth Releaſe to them three, and their Heirs, whether the firſt Leſſee ſhall have the Sole Poſſeſſion of the Lands, as he had before?*

S. It was the Opinion of *Mountague* Chief Juſtice, that the Leſſee for years ſhall have the Sole Poſſeſſion of the Lands, as he had before, and that the others ſhall not have any Poſſeſſion of it with him; and that every one of them has gained a Reverſion in Fee in the ſame Lands, *Bendloe's Rep. f.* 36. *pl.* 65.

Q. 3. *A joint Eſtate is made to Baron and Feme, and to a Third Perſon in Fee, which Third Perſon releaſes all his Right, that he hath, to the Baron, whether the Baron only ſhall have the Moyetie, that the Third perſon had?*

S. It is held, that the Baron ſhall have the Moyetie, which the Third Perſon had, and the Feme of it ſhall have nothing, and the Baron has the Fee Simple therein, notwithſtanding that the Third Perſon does not releaſe to him, and his Heirs, forever, *Bend. Rep. f.* 195. *pl.* 232.

Q. 4. *A Parſon makes a Releaſe of all Demands, whether Tithes are thereby Releaſed?*

S. *Wray* ſaid, that Tithe is not Iſſuing out of the Land, but it is a thing Collateral; and if a Parſon doth Releaſe to his Pariſhioners all Demands in the Land, yet Tithes are not thereby Releaſed, for ſuch general words will not extend to ſuch a ſpecial matter, *Owen's Rep. f.* 39 *and* 40. *Stiles* v. *Miles.*

Q. 5. *A Releaſe by the Feoffees of Ceſtuy que uſe to his Leſſee for years, how it ſhall enure?*

S. It was holden by *Anderſon* Chief Juſtice in this Caſe, that if *Ceſtuy que uſe*, after the Statute of 1 *R.* 2. Leaſeth for years, and afterward the Feoffees releaſe to the Leſſee, and his Heirs, having notice of the uſe, that that Releaſe is to the firſt uſe; but where the Feoffees are Diſſeiſed, and they releaſe to the Diſſeiſor, altho' that they have notice of the uſe, yet the ſame is to the uſe of the Diſſeiſor; And no *Subpœna* lieth againſt the Diſſeiſor, *Leon.* 3 *pt. n.* 245. *Lord Compton's Caſe.*

Q. 6. *Land is given to* A. *and* B. *for the Life of* C. *the Remainder to the right Heirs of* A. *or* B. *who ſhall Survive, whether the Releaſe of* A. *to* B. *ſhall deſtroy the Remainder?*

It

It was holden by the Court, that if *A.* Releaſe to *B.* that the Remainder was abſolutely deſtroyed, *Leon.* 4 *pt. n.* 363. *vid. Rolls* 2 *pt.* 418. *pl.* 5. S.

7. *The Grantee of a Rent charge for Life, acknowledgeth a Statute and afterwards, he releaſeth to the Ter-Tenant, whether the Rent upon this Releaſe ſhall be put in Execution upon the Statute?* Q.

It was the Opinion of *Coke* Chief Juſtice in C. *B.* that the Rent after the Releaſe, by the Cogniſor, ſhould be put in Execution, upon the Statute, *Leonard* 4 *pt. n.* 375. *Duncomb's Caſe.* S.

8. *Mortgagor Articles with a Stranger for the Sale of the Lands Mortgaged, and receives* 50 l. *of the Money; then pending a Bill againſt himſelf and the Mortgagee, for a diſcovery, and performance,* &c. *Releaſeth to the Mortgagee all his Right, and Equity of Redemption, whether this Releaſe be good or not?* Q.

It was held, that the Releaſe is void, *Hardreſs's Rep. f.* 320. *Hill* v. *Worſeley, and Rogiſon?* S.

9. *A Releaſe, that goes by way of Extinguiſhment, being made for an Hour, whether good for ever?* Q.

By *Fineux* Chief Juſtice, and *Tremaile*; a man cannot releaſe upon Condition, not for any time, but always the Condition is void, and the time void, and it ſhall enure to the Party, to whom it is made forever, for that every Releaſe goes always by way of Extinguiſhment; but of a Grant it is otherwiſe; for a man may make a Grant, as he pleaſes, *Sc.* for a time, or upon Condi- S.

tion, *Kelweys Rep. f.* 88, *a.* 89. *a. pl.* 2. *vid. Supra Obſerv.* 18.

Q. 10. *Whether a Releaſe of the Leſſor, after the Aſſignment of the Reverſion be a Bar to the Aſſignee in a Covenant for the Rent againſt the Leſſee?*

S. Covenant for Rent reſerved by a Leaſe indented for years, wherein the Plaintiff declaring, upon the Leaſe, ſhews the Leaſe, the Reſervation by the Paroll; *Reddend, &c.* and one expreſs Covenant for payment of Rent, and that the Leſſor aſſigned the Reverſion to him and his Heirs, and that the Rent became Arrear at ſuch a Feaſt, after the Aſſignment, and not paid, and ſo break the Covenant. The Defendant Pleaded, that before the Rent became Arrear, the Leſſor had Releaſed to him all Covenants and Demands, upon which Plea the Plaintiff Demurred. The Court, 1. That the Covenant lies upon the Paroll *Reddendum*, and ſaid, that ſo it was reſolved often before. 2. That the releaſe of the Leſſor, after the Aſſignment of the Reverſion is no Bar to the Plaintiff; and that by the Common Law, and alſo by the Statute of 32 *H.* 8. For this Covenant runs with the Reverſion. Sir *Thomas Jones's Rep. f.* 102. *Harper* v. *Bird.*

Q. 11. *Two Joyntenants, and one for Money, Grants, Bargains, and ſells and confirms to the other, whether this ſhall amount to a Releaſe?*

S. A deviſe to Eleven perſons, and their Heirs, the Defendant being one of the Eleven, by Indenture granted, bargained, ſold, and confirmed to another of the Eleven, and if any Eſtate paſſed was the Queſtion,

viz.

viz. where one Joyntenant grants to another, if this amounts to a Releaſe, and adjudged, that it doth, *Raymond's Rep. f.* 184. *Cheſter* v. *Willan. vid.* 1 *pt. Queſtion* 23. *p.* 119.

12. *Land is given to Two, upon Condition, that they ſhall not alien, and one of them makes a Releaſe to the other, whether this be a Breach of the Condition?* Q.

It is adjudged, that this Releaſe made by one Joyntenant to the other, is no Breach at all of the Condition, *Raymond's Rep. f.* 413, 114. *Harriſon* v. *Belſeg.* S.

13. *Two Joyntenants make a Feoffment in Fee, upon Condition, that if they pay* 20 l. *before the Feaſt of Pentecoſt, that then they may reenter, before the day one of them releaſeth to the Feoffee upon Condition, all his Right, Title and Demand; the other Jointenant pays the Sum at the day, and the Feoffee receives it, whether by this Releaſe the Condition be deſtroyed?* Q.

Dyer ſaid, That both of them have an Interereſt in the Condition, and if one dies, the Condition ſurvives, and therefore it ſeemed to him, that one of them cannot diſpenſe with it, for that the Condition is Entire, *Daliſon's Rep. f.* 44. *pl.* 33. S.

14. *A Leaſe was made for years, and after the Leſſor deviſes the Reverſion for Life, the Remainder to another in Fee; in waſt brought by him in the Remainder in Fee againſt the Leſſee; He counts, that he in reverſion for Life had releaſed to him all his Right, whether this be a good Releaſe?* Q.

S. *Dyer* ſaid, that this was no good Releaſe, for he in the laſt Remainder may releaſe to him in the firſt Remainder, but not *e Contra*, which *Weſt*, and *Welſh* granted; and a Surrender it could not be, becauſe he, that made it, had not poſſeſſion, *Daliſon's Rep. f.* 32. *pl.* 17.

Q. 15. I. N. *Releaſes all the Right, that he hath to all the Lands, which* I. S. *has by Deſcent, and he has none by Deſcent, whether this Releaſe be void, or not?*

S. It is held, that this Releaſe is void, for it is not certain, and named in the Generality; but if *I. N.* releaſeth all the Right, that he has in White Acre and name the Land Certain, which was purchaſed of ſuch a one; and in truth he purchaſed it of another; yet for that the Land is not firſt certainly named, the Releaſe is good, notwithſtanding the miſrecital afterward, but when it is done in general, it is otherwiſe, and ſo is the Diverſity, *Mich.* 33 *H* 8. *Dyer* 50. *b. pl.* 6.

Q. 16. *Whether there be any diverſity in Law where the Diſſeiſee releaſes to one, that is in by Title, and where he makes a Releaſe to one, who is in, without Title?*

S. By *Aſcue* it was ſaid, That there is a diffierence taken where the Diſſeiſee releaſes to a man who is in Poſſeſſion, by Title, and where the Diſſeiſee releaſes to one, that is in, without any Title, as if two perſons Diſſeiſe me, and I make a Releaſe to one of them, he ſhall be adjudged to be in, by me, in the whole, and ſhall hold his Companion out; but otherwiſe the Law is,

where

where a Diſſeiſor makes a Feoffment to two Men, and the Diſſeiſee releaſeth to one of them all his Right, this Releaſe ſhall enure to both, and it is as an Extinguiſhment, 21 *H.* 6. 41. *and* 22 *H.* 6. 22.

17. *The Grantee of a Rent charge releaſes to one that is Seiſed of the Lands, in the Right of his Wife, and to his Heirs, whether this Releaſe ſhall enure to the Husband and his Heirs, or to the Wife, and her Heirs?* Q.

By *Portman* it was ſaid, That if a man has a Rent Charge out of the Land, in which the Baron is Seiſed in *Jure uxoris*, and the Grantee of this Rent, releaſes all his Right, which he has in the Land, to the Baron, and his Heirs; that yet this ſhall enure to the Feme, and her Heirs, becauſe this will enure by way of Extinguiſhment, 14 *H.* 8. 4 *Br. Releaſes* 25. S.

18. *Whether the Defeaſance of a Releaſe upon Condition ought to be mentioned in the Deed of Releaſe, or conteined in another Deed, Signed, Sealed and Delivered at the ſame time, with the ſame Deed of Releaſe?* Q.

In an Aſſiſe it was agreed by the whole Court, that if *A.* Releaſe to *B.* all his Right in the Land, which *B.* had by Diſſeiſin made to *A.* and after grants to *A.* that if he pay Ten Pounds at ſuch a day, that the Releaſe ſhall be void, and that he may Re-enter, this ſhall not make void the Releaſe, becauſe that the Right was abſolutely gone before; but yet it is clear, that if the condition had been inſerted in the Releaſe it ſelf, that then the Condition had been good; and according to *Treſilian*, and S.

Wich,

Wich, where a Releaſe is Abſolute, and the Indenture of a Defeaſance contains a condition *in fait* alſo upon it, there if the Releaſe, and the Indenture of Defeaſance are delivered *uno inſtante*; this is ſufficient upon the Performance of the Defeaſance, for to Defeat the Releaſe, 43 *Aſſ. pl.* 12. *and* 17 *Aſſ. pl.* 2. *Br. Releaſes.* 34, *and* 39. *vid. my firſt pt. Queſtion* 32. *p.* 24, *and* 25. *Tit. Feoffment.*

Q. 19. *Seven Joyntenants be, and four of them Releaſe to three, and one of the Three Releaſes to two, whether theſe be good Releaſes?*

S. A Man maketh a Leaſe for Term of Life, and after grants the Reverſion to Seven perſons, and the Tenant doth attorn, and after Four of the Seven do Releaſe all their Right to the other Three, and one of the Three, Releaſeth to Two; and it was adjudged by the Court, that they were good Releaſes, and do make the Right to paſs, 14 *H.* 4. 32.

Q. 20. *Tenant for Life, Remainder in Tail, the Remainder to W. for Life, the Remainder over in Fee to the Tenant for Life, whether this laſt Remainder Man can Transfer the Fee by his Releaſe?*

S. A man makes a Leaſe for Term of Life, the Remainder over in Tail, the Remainder to *W.* for Term of Life, the Remainder in Fee to the firſt Tenant for Life, and after the firſt Tenant for Life hath Iſſue and dies, and the Tenant in Tail enters, to whom the Heir of the firſt Tenant, who has the Fee Simple in Remainder Releaſeth all his Right, and after the Tenant in Tail dies without Iſſue, and his Heir Collateral,

rall, enters by colour of the Releaſe, upon which he in remainder for Life enters, and the other brings an Aſſize; and by all the Juſtices it was adjudged, that the Heir Collateral is barrable, for altho' that the Releaſe may give Fee Simple, yet this doth not determine the Eſtate of him in Remainder for Term of Life, 29 *Aſſ. pl.* 5. *Br. Releaſes* 71.

The Seventh Conveyance *by way of* Confirmation.

As for the *Etymology* and *Definition* of a *Confirmation* hear what Learned Authors ſay; *Coke* ſpeaks thus, *Confirmatio* cometh of the Verb *Confirmare*, *quod eſt firmum facere*; and therefore it is ſaid, that *Confirmatio omnes Supplet defectus, licet id quod actum eſt ab initio, non valuit.* His Comment on *Littleton*, *Sect.* 515. *f.* 295. *b.* Both *Bracton* and *Fleta*, have given a Definition of this Confirmation.

The former doth thus define it; *Eſt Confirmatio, prioris juris, & dominij adepti firmatio, cum prima firmitate donationis; nihil enim novi attribuit, ſed vetus conſolidat, & confirmat*, Lib. 2. c. 25. n. 2. *f.* 58. a.

The latter doth offer this Definition thereof; *Charta de Confirmatione eſt illa, quæ alterius factum conſolidat, & confirmat, & nihil novi attribuit; quandoque tamen Confirmat, & addet*, Lib. 3. c. 14. n. 1. p. 196; And *n.* 5. he ſpeaks thus; *Confirmare eſt id prius infirmum fuit, ſimul firmare.*

I. Obſer-

I. *Observations.*

1. If Tenant for Life, grants a Rent charge for Life, or in Fee, and he in Remainder or Reversion, confirms the Grant, this is good, 45 *Ass. pl.* 13. *Br. Confirmation* 16. *Noy cap.* 38. *p.* 77. *Co. Lit. f.* 301. *a. Littl. Sect.* 529.

2. A Confirmation cannot charge an Estate, that is determined by expres Condition or Limitation, *Noy c.* 38. *p.* 78.

3. If Tenant for Term of Life, grants a Rent, and surrenders, and he in the Reversion confirms the Grant in the Life of the Lessee, and after the Lessee dies, the Grant remains good, 26. *Ass. pl.* 38.

4. A Coparcener infeoffs her Companion by Deed, by *Dedi* and *Concessi*, this shall enure by Confirmation without Livery, for this contervails *Remisi*, and *Confirmavi*, 10 *E.* 4. 3.

5. If two Joyntenants are seised of certain Lands, one cannot infeoff the other, because he cannot make Livery of Seisin, by reason the other is Seised, but such Feoffment shall enure by Confirmation, 22 *H.* 6. 42, 43.

6. Where my Entry is Lawful, there my Confirmation is good, as if my Disseisor grants a Rent Charge, and I confirm it, this is good, 11 *H.* 7. 28.

7. If

7. If *I. S.* Infeoffs *I. N.* upon Condition, and after the Condition is broken, and *I. S.* confirms his Eſtate; this is a good Confirmation; but if the Confirmation had been made, before the Condition had been broken; the Confirmation had been ineffectual, 11 *H.* 7. 28. *vid. Co. Lib.* 1. 146. *b. Mayow's Caſe. Co. Litt.* 401. *a.*

8. A Leaſe is made to a man for Term of his Life, and he takes Wife, and the Leſſor grants and confirms to the Baron and his Feme for Term of their Lives, this ſhall not extend to the Wife, becauſe ſhe had nothing in her at the time, when the Confirmation was made, 40 *E.* 3. 23.

9. A man makes a Deed to another, that is ſeiſed of the Freehold, by *Dedi*, *Conceſſi*, *Confirmavi*, this ſhall enure to him by Confirmation, and not by way of Feoffment, 19 *H.* 6. 44.

10. A Parſon grants an Annuity in Fee and reſigns, and then the Patron and Ordinary confirm the Grant, this Confirmation is void, for the Annuity was void before by the Reſignation, which was before the Confirmation, 21 *H.* 7. 1.

11. To confirm an Eſtate for an Hour, if it be to Tenant for Life, it is good for Life; if it be to Tenant in Fee, for ever, *Noy cap.* 38. *p.* 78.

12. A Leaſe for years may be Confirmed for a time, or upon Condition, or for a Piece of the Land; but if a Frank-Tenement be, it ſhall enure to the whole abſolutely, *Noy cap.* 38. *p.* 78.

13. In

13. In a Confirmation, new ſervice may not be reſerved, but old ſervice may be abridged, *Noy cap.* 38.

14. A Confirmation made to one Diſſeiſor, ſhall be voydable to the other, ſo ſhall not a Releaſe, *Noy cap.* 38.

15. To Confirm the Eſtate of Tenant for Life, to his Heirs, cannot be but by *Habendum*, the Land to him and his Heirs; and therefore it is good to have ſuch a *Habendum* in all Confirmations, *Noy cap.* 38. *p.* 78.

16. A Confirmation cannot be made by a Dean *de facto* to the Leaſe of a Biſhop; If he be not Dean *de Jure*, for it is Coupled with an Intereſt, *Palmer's Rep. f.* 479, 480. *Evans and Kiffin* v. *Aſcuithe.*

17. A Leſſor Covenants with the Leſſee for years, and a Stranger, that he and the Stranger ſhall have it for Life, this ſhall enure as a Confirmation of the firſt Eſtate, and the Remainder over to the Stranger for his Benefit, *Palmer's Rep. f.* 31. *Tiler* v. *Fiſher and Greenwood.*

18. A Feoffment by the words [*Dedi* and *Conceſſi*] and the party would have it, by way of Confirmation, but it was denied, *Palmer's Rep. f.* 352. *The Lord Sheffield's Caſe.*

19. A Leaſe for 70 years, made by a Prebend, before the Statute is good, though not Confirmed till after the Statute, *Hob. Rep. f.* 7. *Spendlows* v. *Burket.*

20. He who is wrongfully Collated by the Biſhop, is an Incumbent capable of a Confirmation, *Hobart's Rep. f.* 302.

II. Queſtions

II. Queſtions *with their* Reſolutions.

1. *A Leaſe is made for two years, and the Leſſor doth confirm the Eſtate of the Leſſee for* 20 *years, whether this be a good Confirmation for* 20 *years?* Q.

It was held, that it is a good Confirmation for twenty years, becauſe all is but a Chattel, *Leonard* 4 *pt. n.* 360. S.

2. *Whether the Confirmation of the Dean and Chapter, made to Confirm the Leaſes granted by the Biſhop, requires any delivery of the Deed?* Q.

Manwood held, that the Confirmation of Dean and Chapter made to Confirm Leaſes granted by the Biſhop, does not require any Livery of the Deed; *Shute*, to the contrary; that it is not of any Effect without Livery. *Manwood*, it is good, if it be Sealed, altho' it Lies continually in the Chapter Houſe, *Savile's Rep. n.* 102. *f.* 49. S.

3. *Whether the Confirmation of the Leſſor to the Aſſignee of part of the Land, ſhall Extinguiſh the Rent of the whole?* Q.

H. makes a Leaſe for years of Twenty Acres of Land, rendring Rent, the Leſſee grants all his Eſtate in one of the Acres to *I. S.* the Leſſor confirms the Eſtate of *I. S.* Reſolved by the Court, that by this Confirmation, the entire Rent is gone in all the other Acres, for being an entire Contract, and by his own Act, there cannot be an Occupation for part, and an Extinguiſhment S.

guiſhment for the other part, and in this Caſe there is no difference between Suſpenſion, and an Extinguiſhment, *Owen's Rep. f.* 10. *Goddards Caſe.*

Q. 4. *A Prebendarie of a Church Cathedral grants a Leaſe for years of parcel of his Prebend; and the Dean and Chapter Confirms the Eſtate, whether this ſhall bind the Succeſſor, with the Aſſent of the Biſhop?*

S. It ſeemed to divers, that it ſhall bind the Succeſſor, for that the Biſhop is the Patron and Ordinary of every Prebend, *Paſch.* 38 *H.* 8. *Dyer* 61. *b. pl.* 30.

Q. 5. *The King Seiſed of a Manor with the Advowſon Appendant, granted the Manor to* I. S. *for Life, and then granted the Manor to* I. D. *after the Death of* I. S. Habendum una cum Advocatione; *And then in Parliament, reciting both the Grants, confirmed them by Parliament, whether the Advowſon paſſed?*

S. It was adjudged that the Advowſon paſſed not. The Caſe of the Abbeſs of *Sion*, 38 *H.* 6. 33. which Caſe is cited by Sir *Henry Hobart* in his Reports, *f.* 161. *Colt and Glover* v. *Biſhop of Coventry and Litchfield.*

Note, by *Priſot* the Caſe is put thus; If the King grant a Manor, *Habendum una cum Advocatione*, which is in Groſs, the Grant is void, as to the Advowſon, and if it be confirmed by Parliament, neither the Confirmation nor the Grant is good, becauſe the Advowſon was not expreſſed in the Grant, but in the *Habendum*, and therefore the Confirmation of the Grant cannot make that good, which is not compriſed in the Grant; but it may be averred if the Confirmation had been

been of all, that is conteined in the Patent; it ſeems to be all one, for a Confirmation cannot render a void thing good, 38 *H.* 6. 34. 37. *Br. Confirmation* 13.

6. *Lands are Let to* I. S. *for Life, who lets the ſame Lands to* I. N. *for Forty years, by vertue whereof he is in Poſſeſſion; the Leſſor confirms the Eſtate of* I. N. *and then* I. S. *dies, whether the Leſſor can enter into the Land during the Term?* Q.

If I let Land to a man for Term of his Life, who letteth the ſame to another for Term of Forty years, by force of which he in Poſſeſſion; if I by my Deed confirm the Eſtate of the Tenant for years, and after the Tenant for Life dieth, during the term of years, I cannot enter into the Land, during the ſaid term, *Lit. in his Treatiſe of Tenures Lib.* 3. *c.* 9. *Sect.* 516. S.

7. *Whether words can amount to a Grant, and a Confirmation of one, and the ſame thing?* Q.

If a Diſſeiſor granteth a Rent to the Diſſeiſee, and he by his Deed granteth it over, and after re-enter, in this Caſe, one, and the ſame words amount to a Grant, and to a Confirmation, in Judgment of Law, of one and the ſame thing; *ne Res pereat*; and ſo it is if a Diſſeiſor make a Leaſe for Life, or a Gift in Tail, the Remainder to the Diſſeiſee in Fee, the Diſſeiſee by Deed granteth over the Remainder, the particular Tenant doth attorn, the Diſſeiſee ſhall not enter upon the Tenant for Life, or in Tail, for then he ſhould avoid his own Grant, which amounteth to a Grant of the Eſtate, and Con- S.

firmation also, *Coke in his Comment on Littleton Sect.* 1531, *f.* 302 a. *vid. Co. Lib.* 5. *The Case of Ecclesiastical persons.*

Q. 8. *A Confirmation to Tenant for Life, and to him in Remainder for Life, to have to them, and their Heirs, how it shall enure?*

S. If a Lease for Life be made to *A.* the Remainder to *B.* for Life, and the Lessor Confirms their Estates in the Land, to have and to hold the Land to them and their Heirs, *A.* taketh one Moyety, to him and his Heirs, and therefore of the one Moyety he is Seised for Life, the Remainder to *B.* for Life, and then to him and his Heirs; of the other Moyety *A.* is Seised for Life, the immediate Inheritance to *B.* and his Heirs, because as to the Moyety which *B.* takes, the same is Executed; as if the Reversion be granted to Tenant for Life, and a Stranger, it is Executed for one Moyety, and therefore in this Case they are Tenants in Common, *Coke in his Comment on Littleton, Sect.* 525. *f.* 299. *b.*

Q. 9. *Where a Confirmation to the Grantee for Life of a Rent shall be good by way of Enlargement, and where not?*

S. If a man grant a Rent charge issuing out of his Land to another for term of his Life, and after he confirmeth his Estate in the said Rent; to have and to hold to him in Fee Tail, or Fee Simple, this Confirmation is void, as to inlarge his Estate, because he, that confirmeth hath not any Reversion in him; but if a man be Seised in Fee of a a Rent Service, or Rent Charge, and he

he grant the Rent to another for Life, and the Tenant Atturneth, and after he confirmeth the Eſtate of the Grantee in Fee Tail, or in Fee Simple, this Confirmation is good, as to inlarge his Eſtate according to the words of the Confirmation for that he, which Confirmed at the time of the Confirmation had a Reverſion of the Rent, *Littleton Lib.* 3. *cap.* 9. *Sections* 548, *and* 549.

Q. 10. *A. is Diſſeiſed, and after confirms the Eſtate of the Diſſeiſor, whether the Diſſeiſor has a good Eſtate in Fee Simple, without any mention made of the word Heirs?*

S. If I be Diſſeiſed, and I confirm the Eſtate of the Diſſeiſor, he hath a good, and rightful Eſtate in Fee Simple, albeit in the Deed of Confirmation no mention be made of his Heirs, becauſe he had a Fee Simple at the time of the Confirmation; for in ſuch Caſe if the Diſſeiſee confirm the State of the Diſſeiſor, to have and to hold to him, and his Heirs of his Body engendered, or to have and to hold to him for term of his Life, yet the Diſſeiſor hath a Fee Simple; and is Seiſed in his Demeſn, as of Fee, becauſe when his Eſtate was confirmed, he had then a Fee Simple and ſuch Deed cannot change his Eſtate, without Entry made, upon him, *Littleton Lib.* 3. *cap.* 9. *Sect.* 519.

Q. 11. *Whether a Leaſe made by a Biſhop before Conſecration, and Confirmed by the Dean and Chapter be good to bind his Succeſſor?*

S. It is ſaid, That the Biſhops in *E.* 6. his time were not Conſecrated, and therefore were not Biſhops, and conſequently a Leaſe for years confirmed by ſuch, and their Deans and Chapters, ſhall not bind the Succeſſors, for ſuch were never Biſhops; otherwiſe it is of a Biſhop deprived, which was a Biſhop in Deed, at the time of the Demiſe and Confirmation made: And ſo note a Diverſity, 2 *M.* 1. *Br. Leaſes* 68.

Q. 12. *Whether a Seigniory in Ancient Demeſn can be changed by a Confirmation into Frank Fee?*

S. It was held by *Belknap*, that the Lord by his Confirmation, by *Dedi, Conceſſi, & Confirmavi*, to the Ter-Tenant in Poſſeſſion, *Tenendum ad Communem Legem* may change Ancient Demeſn into Frank-Fee; and ſo pleadable at the Common Law, 49 *E.* 3. 7, 8. *Br. Confirmation* 5. And *Ancient Demeſn* 8.

Q. 13. *Whether a Confirmation can be good in Law, that is made by the Confirmator before a Title accrued to him?*

S. In an Aſſize; where the Father grants a Rent Charge for Life and the Son confirms it, and the Father dies, and the Grantee brings an Aſſize for the Rent, and Iſſue was taken upon the Seiſin of the Son *Tempore Confirmationis factæ*; and ſo it ſeemeth, that he, who confirms without warranty, or has nothing in the Land, at the time of the Confirmation made, as the Son in the Life of his Father, and the like; that in this Caſe the Confirmation ſhall

ſhall not bind the Son, after the Death of his Father, but he may well ſay that he hath nothing in the Land at the time of the Confirmation, 14 *Aſſ. pl.* 14. *Br. Confirmation* 14.

In the Caſe of the Rector of *Edington*, *Markham* ſaid, that a Confirmation is void, unleſs he, that made it, had a Right in him at the time of the Confection thereof; which was not denied by the Court; therefore it ſeems to be good Law, that a Confirmation made by the Son without any warranty in his Fathers time is void againſt the Son, after the death of the Father, 19 *H.* 6. 62.

The Eighth Conveyance *by way of* Attornment.

Attornment [*Attornamentum*] cometh of the French [*Tourner*, i. e. *vertere*,] and in our Common Law, is a yielding of the Tenant to a new Lord, or acknowledgment of him to be his Lord, for otherwiſe he, that buyeth, or obtaineth any Lands or Tenements of another, which are in the Occupation of a third, cannot get poſſeſſion; the words uſed in Attornments are ſet down in *Littleton*, *Lib.* 3. *cap.* 10. *Sect.* 551. *I agree to the grant made to you*, &c. Or, *I am well content with the Grant made to you*, but the moſt common Attornment is, Sir, *I Attorn to you by force of the ſaid Grant*, or, *I become your Tenant*, &c. Or to deliver to

the Grantee a Peny, or a Half peny, or a Farthing by way of Attornment.

Noy in his Tract of the principal Grounds of the Common Law, *c.* 23. *p.* 65. gives this deſcription of it; Attornment is the Agreement of the Tenant to the Grant, by writing, or by word, as to ſay, *I do agree to the grant made to you*, or *I am well contented with it*, or *I do Attorn to you*, or *I do become your Tenant*, or *I do deliver unto the Grantee a Peny, by way of Seiſin of a Rent*, or pay, or do but one Service only in the name of the whole; it is good for all.

I. *Obſervations.*

1. Upon a Grant by deed one Joyntenant may Attorn at one time, and the other at another time, but upon a Grant by Fine they muſt Attorn together, 9 *H.* 6. 21.

2. Two Joyntenants for Life, or years, If one Attorns and ſurevives, this is a good Attornment for the whole, 9 *H.* 6. 21.

3. A Feoffment made of a Manor, and Livery of the Demeſnes, yet the Services paſs not without Attornment; and upon a Leaſe of a Manor for years, the Tenants ought to Attorn, 20 *H.* 6, 7.

4. Two Joyntenants of a Seigniory, or Reverſion, and one of them releaſeth to the other, there he alone ſhall make the Avowry, or ſhall have an Action of Waſt without Attornment, for he is in, by the firſt Feoffor, 28 *H.* 6. 2.

5. The

5. The King Grants Rent, or a Lordſhip by his Letters Patents, there the Patentee may make an Avowry, without Attornment; the ſame Law is upon the Grant of a Reverſion, 34 *H.* 6. 51.

6. Where a man deviſeth a Reverſion to another by his Will in Fee, there the Deviſee ſhall have an Action of waſt, for this paſſeth without Attornment, 34 *H.* 6. 6.

7. He in Reverſion outeth Tenant for Life and makes a Feoffment, and Tenant for Life doth reenter, this amounts to an Attornment, 34 *H.* 6. 6.

8. upon the Eſcheat of a Reverſion, the Lord may have an Action of Waſt without any Attornment, 34 *H.* 6. 6.

9. A man granteth a Rent Service, or Rent Charge to the Terre-Tenant and to another, and the Terre-Tenant accepts the Deed, this is a good Attornment, and ſhall enure as an Extinguiſhment of one Moyety, and by Grant of the other Moyety, 34 *H.* 6. 41.

10. No Attornment is requiſite upon an Extent, upon a Statute Merchant, becauſe the Eſtate is created by Law, as a Woman recovers Rent in Dower, ſhe may make Avowry without any Attornment.

11. A Feoffment is made of Lands, put in Execution, upon a Statute Merchant, the Tenant by Statute Merchant ought to Attorn, 7 *H.* 4. 16.

12. Tenant in Dower grants her Eſtate, and after he in Reverſion grants his Reverſion to another in Fee, there Tenant in Dow-

er ought to Attorn, and her Attourning is ſufficient, 11 *H.* 4. 18.

13. A man ſeiſed in Fee, makes a Leaſe for Life, and then grants the Reverſion to *I. S.* and the Tenant for Life attorns by a Peny, and a good Attornment; and it ſeems to be Reaſon; becauſe every apparent Agreement is a good Attornment, and this is a good Agreement, 8. *Aſſ. pl.* 25.

14. Attornment may be made by Tenants to the Lord in his Court, to the Steward thereof, in the Abſence of the Lord, or purchaſer; but Attornment to a Servant of the Purchaſer, out of Court, and in the abſence of the Purchaſer, not good; but by payment of a Peny by any Tenant to the Servant of the Purchaſer, in his Abſence, in the name of Seiſin of their ſeveral Rents, is a good Attornment, for the Servant may receive for his Maſter; but *Quære*, if no Rent be then due, nor the Rent day come, 28 *H.* 8. *Br. Attornment* 40.

15. The Grantee of a Seigniory by Fine ſhall have Eſcheats and the ward of the Heir, without Attornment; but he cannot make an Avowry without it, 10 *H.* 6. 16.

16. Lands changed for a Reverſion, this is a good Exchange, if the Tenant for Term of Life, does attorn, 9 *E.* 4. 39.

17. A man makes a Leaſe of Land for Term of Life, and then grants the Reverſion to the King in Fee, this ſhall not paſs, if the Tenant attorn not; and yet it ſeems to ſome; if the deed be inrolled, that the Reverſion paſſes; but then the King ſhall have no

no Rent, nor Action of waſt, nor Avowry without Attornment, 50 *Aſſ. pl.* 1.

18. Attornment made upon the Grant of a Reverſion is good, although the Attornment be executed in a Foreign County, 33 *H.* 6. 40.

19. The Reverſion of Dutchy Lands will paſs, by the Dutchy Seal without Attornment, *Raymond's Rep. f.* 90, 91. *Carpenter* v. *Marſhal.*

20. A Mayor and Communalty grant a Reverſion, and then the Mayor dies, the Tenant atturns, this is a good Attornment; but if a Feme Sole grants a Reverſion, and then takes an Husband, and after the Tenant Attorns, this is not good againſt the Baron, 11 *H.* 7. 19.

21. Where Lands are Sold, by deed indented, and inrolled, according to the Statute of 27 *H.* 8. *cap.* 10. there, becauſe the uſe is changed by the Bargain and Sale, by the aforeſaid Statute, and the buyer in poſſeſſion and hath not any way to force the Tenant to attorn, there he may diſtrein, and make Avowry without Attornment; otherwiſe the Law is, upon a Grant by Fine, for there he may have the Writ of *per quæ ſervitia Br. Attornment, 29 in Fine.*

22. A common Perſon may compel the Tenant to attorn, but the King cannot; for a *Quid Juris clamat* lies not for the King, becauſe a Fine by the King is always by render, *Raymond's Rep. f.* 91. *Carpenter* v. *Marſhall.*

23. *If*

23. If a Fine be Levied to an uſe, the *Ceſtuy que uſe*, ſhall have the Rent, without Attornment, *Raymond's Rep. f.* 91. *Carpenter* v. *Marſhall.*

24. Leſſee for years Attorneth to the Grantee of the Reverſion, the Grantee ſhall have the Rent due from the Day of Attornment, *Aleyn's Rep.* 34. *Com. Northumb.* v. *Green.*

25. Attornment is not requiſite where a Reverſion paſſes by the Statute of uſes, *Anderſon* 2 *pt. n.* 7. *f.* 15, *and* 203.

26. Attornment ought to be made in the Life of the parties, that is to ſay, in the Lifetime of the Grantor and Grantee, *Anderſon*, 2 *pt. f.* 203, and *Noy cap.* 33. *p.* 65.

27. Without Attornment, a Signiory, a Rent charge, a Remainder, or a Reverſion, will not paſs, but by matter of Record, *Noy cap.* 33. *p.* 65.

28. The Aim and end of Attornment, is to perfect the Grant, and therefore may not be made upon Condition, or for a time; ſo a Tenant that is to perfect a Grant by his Attornment, cannot conſent for a time, or upon a Condition, nor for part of a thing granted; but it ſhall enure to the whole abſolutely, *Noy cap.* 33. *p.* 66.

II. Que-

II. Questions *with their* Resolutions.

Q. 1. *A Seigniory granted to* I. S. *for Life, by Deed, with a Remainder over in Fee, before any Attornment,* I. S. *Tenant for Life dies, the Tenant attorneth to the Remainder man, whether this be a good Attornment, as to make the Remainder Effectual?*

S. If a Seigniory be granted to one for Life, by Deed, with a Remainder over in Fee Simple, the Grantee for Life dies, before Attornment, and the Tenant doth Attorne to him, who is in the Remainder, this shall not serve, or be effectual to him in Remainder, because it was not vested before, in the Grantee for Life, and therefore it is a void Remainder; but otherwise it is, if the Conveyance had been by Fine, for there the Service shall immediately pass, 20 *H.* 6. 7.

Q. 2. *A Lease is granted to* I. N. *for* 40 *years, and after another Lease to* I. S. Habendum *from the end of the first Term, for* 20 *years, whether Attornment be requesite in this Case?*

S. If a man Leases for 40 years, and after makes another Lease of the same Land to another, *Habendum a Fine primi Termini*, for Twenty years, *tunc proximo sequentibus*, there needs no Attornment in this Case; and *e Contra*, where he grants the Reversion, *Habendum* the same Reversion from the expiration of the first Term for 40 years next following, there ought to be Attornment made, 37 *H.* 8. *Attornment* 41.

3. I. S.

Q. 3. I. S. *Seised of a Rent in Fee, grants it to* I. N. *in Fee, and before any Attornment, the Grantor dies, the Tenant paying the Rent to the Grantee, whether this be a good Grant in Law, there being no Attornment made in the Life of the Grantor?*

S. A man Seised in Fee of Rent, grants it over in Fee, and dies before any Attornment, and after the Tenant pays the Rent to the Grantee; and yet the Grant is void; for that the Tenant did not attorn nor pay the Rent, in the Life time of the Grantor, and so the Rent passed not 40 *Ass. pl.* 10.

Q. 4. *A Lease is made for Life, and then a Grant is passed of the Reversion to* I. S. *and the same Reversion is also granted to* I. N. *the Tenant Attorneth to both of the Grantees, whether the grants be good or not?*

S. A man Leases Land for Life, and after grants the Reversion to *I. S.* and after grants it to *I. N.* and the Tenant doth attorn to them both, this is void; for 'tis contrary to the Grant; but if a man makes a Lease for Life of two Acres, and grants the Reversion of one of the Acres to one, and the other Acre to another man, and the Tenant attorns to them both, this shall be good in Law, 11 *H.* 7. 12.

Q. 5. *A Lease for Life, and a Grant of the Reversion for a Term of Years to commence after, whether any Attornment be Requisite?*

S. If a man leaseth a House, and 200 Acres of Land for Term of Life, and after grants the Reversion of the House, and Land to another, *Habendum* the said House, Lands and Tenement, from the Feast of St. *Michael* the

the next after the Death or Determination of the *Intereſſe* of the Tenant for Life for 21 years then next following; the Tenant for Life dies, before any Attornment, yet the Grant of the Reverſion is good, for that the words in the *Habendum* of the Houſe and Land is intended to be a Leaſe, and the Rent was reſerved upon it, and ſo a good Leaſe without Attornment, by the opinion of *Brown*, *Saunders* and *Stamford* Juſtices, yet by *Brook* Chief Juſtice, it is no other than a Grant of the Reverſion, aud no Leaſe: but yet the Grant is good without Attornment, becauſe it is to commence, after the death of Tenant for Life, ſo that the Tenant for Life, ſhall not be attendant to the Grantor, nor ſhall he make avowry upon him, neither ſhall he have an Action of Waſt, *&c. per Judicium Curiæ*, *Br. Attornment* 60, *and Leaſes* 73.

6. *A Feoffment is made in Fee of a Manor, to which an Advowſon is appendant, and Livery is made in the Demeſus, but no Attornment in the Caſe; what ſhall paſs?* Q.

It was holden, that in ſuch Caſe, the Advowſon ſhall paſs, but none of the Services, if there be no Attornment made, *Leonard* 3 *pt. n.* 239, *Long's Caſe.* S.

7. *Grantee of a Manor, before Attornment, grants the Advowſon, and then Attornment is made, whether this Grant be good?* Q.

A man ſeiſed of a Manor with an Advowſon appendant, grants the Manor *cum pertinentijs*; the Grantee grants the Advowſon afterwards the Tenants do attorn, and it was adjudged, that the Grant was good S.

in

in Law, *Palmer's Rep. f.* 352. *Lord Sheffield's Caſe.*

Q. 8. *Where the Law creates the Eſtate, whether there Attornment be neceſſary?*

S. A man obtaineth Judgment in Debt, or Treſpaſs againſt the Maſter of the *Savoy*, and has Execution of the Reverſion of a Leaſe for years, and of a Rent, and he makes an Avowry for the Rent, and Alledgeth no Attornment of the Leſſee for years made to him, and it was held by *Walſh* and *Dyer*, that the Rent and Reverſion are in him immediately, without any Attornment, for the Law made his Eſtate, and he has not any means to compel the Leſſee to attorn to him, *Daliſon's Rep. f.* 69. *pl.* 37.

Q. 9. *Upon a Leaſe of a Reverſion whether Attornment be neceſſary?*

S. In Treſpaſs upon a Special verdict the Caſe was ſuch; the Abbot of *Tewsbury* made a Leaſe for years, and after demiſed the Reverſion to a Stranger, of the Land for 40 years, *Habendum* the ſaid Reverſion, after Expiration, Determination, Surrender, *&c.* of the former Leaſe, it was agreed, that this was a good Leaſe in Reverſion without Attornment, *Daliſon's Rep. f.* 89 *pl.* 6.

Q. 10. *A Copiholder Surrenders his Reverſion, whether there needs any Attornment?*

S. A Copyholder makes a Leaſe for years, rendring Rent, and then Surrenders two parts of the Reverſion, and he, to whoſe uſe the Surrender was made diſtreineth for the two parts of the Rent, and mentions not any Attornment of the Tenant in his Avowry, whereupon the Plaintiff demurrs; and 'twas adjudg-

adjudged by the Court, that Attornment and notice are not neceſſary, becauſe the Surrender is a thing notorious of it ſelf, *Raymond's Rep. f.* 18. *Black* v. *Mole.*

11. *Whether a Reverſion of a Term for years, granted for a valuable conſideration, can paſs by the Statute of uſes, without Attornment?* Q.

In Treſpaſs for taking the Beaſts of the Plaintiff; the Defendant juſtifies by diſtreſs for Rent, where the Caſe was, that a Termor for a long Term, demiſeth the Lands for part of the ſaid Term, rendring Rent; and after for valuable conſideration granted the Reverſion of the Term to the Defendant, who has diſtreined for the Rent incurred after the Grant; but no Attornment was had to the Grant; and by the Court, nothing paſſes by the Grant for want of Attornment, for altho' this Reverſion is granted for Valuable conſideration, yet it is not executed by the Statute of uſes, which extendeth only, where the Eſtate is granted by one perſon ſeiſed, and the Grantor is only poſſeſſed of a Term for years; and Judgment given for the Plaintiff, Sir *Thomas Jones's Rep. f.* 217, 232. *Stevens* v. *Hitchins. Vid. Latche's Rep. King* v. *Samerland*; *Rolls* 2 *pt.* 489, *and Cro. Car. f.* 243. *Caſe de Wills.* S.

12. *What Advantages the Conuſee of a Fine may take before Attornment and what not?* Q.

If there be Lord and Tenant, and the Tenant holdeth of the Lord, by certain Rent, and Knights ſervice, if the Lord grant the Services of his Tenant by Fine, the Services are preſently in the Grantee by force of the Fine; but yet the Lord may not diſtrein S.

ſtrein for any parcel of the Services, without Attornment; but if the Tenant dieth, his Heir within Age, the Lord ſhall have the Wardſhip of the body of the Heir, and of his Lands, *&c.* Albeit he never attorned, becauſe the Seigniory was in the Grantee preſently by force of the Fine, and alſo in ſuch Caſe if the Tenant die without Heir, the Lord ſhall have the Tenancy by way of Eſcheat, *Littleton Lib.* 3. *cap.* 10. *Sect.* 578.

By *Belknap*, a man ſhall have things before Attornment, which may be taken by way or Seiſure, as entry upon Alienation to his Diſinheritance, or for an Eſcheat, or to ſeiſe a Ward, but he ſhall not have a Writ of Ward, nor Writ of Eſcheat, nor a Writ of Entry in *Conſimili Caſu*, 48. *E.* 3. 15.

If a man (ſaith *Coke*) make a Leaſe for years and grant the Reverſion by Fine, if the Leſſee be ouſted, and the Conuſee diſſeiſed, the Conuſee without Attornment ſhall maintain an Aſſize, for this Writ is maintained againſt a Stranger, where there needeth no privity; and ſuch things as the Lord may ſeiſe, or enter into without Suing any Action, there the Conuſee, before any Attornment may take benefit thereof, as to Seiſe a Ward or Heriot, or to enter into the Lands or Tenants of Ward, or Eſcheated to him, or to enter for an Alienation of Tenant for Life, or years, or of Tenant by Statute *Merchant*, *Staple*, or *Elegit*, to his diſheriſon, *Co. Litt. f.* 320. *a.*

By

By *Littleton* again; if a man grant the Reverſion of his Tenant for Life, to another by Fine, the Reverſion preſently, paſſeth to the Grantee by force of the Fine, but the Grantee ſhall never have an Action of Waſt without Attornment. But yet if the Tenant for Life alieneth in Fee, the Grantee may enter, becauſe the Reverſion was in him by force of the Fine, and ſuch Alienation was to his Diſheritance.

But in this Caſe, where the Lord granteth the Services of his Tenant by Fine, if the Tenant die, (his Heir being of full Age) the Grantee by the Fine ſhall not have relief, nor ſhall ever diſtrein for Relief, unleſs that he hath the Attornment of the Tenant, that dieth, for of ſuch a thing, which lieth in diſtreſs, whereupon the Writ of Replevin is ſued, a man muſt and ought to avow the taking good and rightful, and there ought to be an Attournment of the Tenant, altho' the Grant of ſuch a thing be by Fine; but to have the wardſhip of the Lands, or Tenants ſo holden, during the Non-age of the Heir, or to have them by way of Eſcheat, there needs no diſtreſs, but an Entry into the Land by force of the Right of the Signiory, which the Grantee hath by Force of the Fine, *Littleton Lib.* 3. *c.* 10. *Sections* 580, 581, 582.

The Ninth Conveyance *by way of* Surrender.

A Surrender is the Conſent of a particular Tenant, that he in the Reverſion, or the Remainder ſhall preſently have the Poſſeſſion, and this is either a Surrender in Deed by Actual yielding up of the Eſtate, or in Law by the Taking of a new Leaſe, or ſuch other Act: Author of the terms of Law, *f.* 278. *b. Tit. Surrender.*

I. *Obſervations.*

1. A Surrender ought to give a preſent Poſſeſſion of the thing Surrendred unto him, that hath ſuch an Eſtate, where it may be drowned, *Noy cap.* 36. *p.* 74.

2. A Jointenant cannot Surrender his Intereſt to his Companion or fellow, *Noy cap.* 36.

3. Surrenders are in two manners; in Deed, and in Law; the former muſt have ſufficient words to prove the Aſſent and Will of the Surrender to Surrenderer, and that the other do alſo thereunto agree. The latter Surrender, *viz.* In Law, is when the Leſſee for years, doth take a new Leaſe for more years, *Noy cap.* 36. *p.* 76.

4. A

4. A Leſſee for years cannot Surrender before the Term doth begin; he may grant, he cannot ſurrender part of his Leaſe, *Noy cap. 36. p. 74.*

5. The Husband may ſurrender his Wives Dower for his Life, and her Leaſe for ever, *Noy cap. 36. p. 75.*

6. The Eſtating of things, that may not be granted without a Deed, may be determined by the Surrender of the Deed to the Tenant of the Land, *Noy's Treatiſe of the Laws c. 36. p. 74.*

7. By Deed indented, a man may Surrender upon Condition, *Noy cap. 36. p. 75.* In 14 *E.* 4. 6. it's ſaid, a *Surrender may be made upon Condition.*

8. A Surrender of Land in another County, where the Land lies not, is good in Law, 40 E. 3. 24.

9. Tenant for Life doth infeoff him in Remainder, it is a good Surrender 50 *E.* 3. 6. 11 *H.* 4 61.

10. A thing that may be demiſed without Deed, may be Surrendered without Deed although the Leaſe was made by Deed, but that, which cannot paſs by Grant without Deed, as Rent, and the Like, that cannot be Surrendered without Deed, 19 *H.* 6. 33.

11. A man Leaſeth Land for years, and after makes another Leaſe to the ſame Leſſee of the ſame Land, the Acceptance of the Second Leaſe, is a Surrender of the former, 14 *H.* 8. 15.

12. A Tenant Surrenders to him in Reversion, to which he agrees, yet he is not in possession, until he has made an Actual Entry; And thererefore the Surrenderee cannot grant it over to another, until such an Entry be made by him, 14 *H.* 8. 21.

13. A man makes a Leaſe for years, Rendring Rent, and after the Tenant withdraws his Stock and Goods on the Land for the over Greatneſs of Rent, the Leſſor enters; his Entry is unlawful, for this is no Surrender, 8 *Aſſ. pl.* 20. 8 *E.* 3. 46. 27 *H.* 6. 10.

14. Leſſee for Life grants to the Leſſor, that he may enter into the Lands, and upon this he makes an Entry, agreeing thereunto, this is a Surrender; the ſame Law it is, If the Tenant ſaith, *That he willeth, that his Leſſor ſhall have the Land*, If the Leſſor enters, this is a good Surrender, 40 *Aſſ. pl.* 16. 40 *E.* 3. 24. *pl.* 194.

15. A Man Leaſes his Land to *W. N. Habendum* for 20 years, to commence at *Michaelmas* next enſuing; *W. N.* cannot ſurrender before *Michaelmas*, and the Reaſon is, becauſe he had no Poſſeſſion, 4 *H.* 7. 10. 22 *E.* 4. 37. *vid Supra Obſerv.* 4.

16. two are ſeiſed joyntly of Lands in Fee, and make a Leaſe for Life; the Tenant for Life ſurrenders to one of them, this is good to both, 5 *E.* 4. 4.

17. A Tenant breaks his Covenant, in point of Reparations, or the like, and then Surrenders, and the Leſſor accepteth it, yet the Leſſor may have an Action of Covenant againſt his Leſſee, 50 *E.* 3. 27.

18. To

18. Tenant for Term of Life Surrenders to him in Reverſion *Extra terram*, to which the Reverſioner agrees, the Freehold by this is immediately in him, and is Tenant to a *Præcipe quod reddat*, without Entry, but he ſhall not have an Action of Treſpaſs without an Entry, 31 *H.* 8. *Br. Surrender* 50.

19. A *Choſe en Action* muſt be Surrendered by Deed, *Ventris* 1 *pt. f.* 297. *Woodward* v. *Aſton.*

20. A Leaſe to *A.* for Life, Remainder to *B.* for Life, the Remainder to *C.* in Fee; If *B.* Surrenders to *C.* it muſt be done by Deed, *Leonard* 4 *pt. n.* 32.

21. To a Surrender are incident three Things, Sc.

1. An actual Poſſeſſion in him, that Surrenders.

2. An actual Remainder or Reverſion in him, to whom the Surrender is made.

3. Conſent and Agreement between the parties, *Owen's Rep. Perryn* v. *Allen.*

II. Queſtions *with their* Reſolutions.

Q. 1. *A Leaſe is made for Life, with a Rent; Tenant for life grants his Intereſt to his Leſſor, and to others, whether this be a Surrender for part, or not?*

S. A Man Leaſes for Term of Life, Rendring Rent, and after the Tenant for Life, grants his Eſtate to his Leſſor and to two others; It was the opinion of the Judges, that this was a Surrender for a third part; for when the Fee and Frank tenement meet together, one determines the other, and ſo the Joynture is ſevered, and they are Tenants in Common, 7 *H.* 6. 2, 3.

Q. 2. *A Feoffment is made to two,* Habendum *to them, and the Heirs of one of them, whether he that has the Freehold, can ſurrender to the other?*

S. If I Enfeeoff two men, *Habendum* to them and to the Heirs of one of them, there he who has the Freehold, cannot ſurrender to the other Joyntenant, that has in him the Fee, becauſe of the Joynt Poſſeſſion; for in this Caſe, the Freehold cannot be drowned in the Reverſion, by reaſon that he, who has the Fee, is Joyntly Seiſed of the Poſſeſſion with him, that Surrenders; And it cannot properly be ſaid a Surrender, but where he that ſurrenders gives poſſeſſion to him, that takes by the ſurrender, 22 *H.* 6. 51.

3. *Te-*

3. *Tenant for Life the Remainder to* W. *for Life, grants his Eſtate to him in Remainder for Life,* Habendum *to the Grantee in Remainder, for the Term of the Life of* I. S. *whether this be a Surrender or not?* Q.

A Man ſeiſed of Lands in Fee, leaſeth his Lands to *I. S.* for Term of his Life, the Remainder to *W.* for Term of his Life, and he, that is Tenant for Life, Leaſes his Eſtate to *W.* the Remainder-man for Life, *Habendum* to the Grantee in Remainder, for the Term of the Life of *I. S.* Tenant for life; it was adjudged, that this is no other than a Surrender, 24 *E.* 3. 32. 68. S.

4. *Land is given to Baron and Feme, the Remainder to* I. N. *the Baron makes a diſcontinuance, and takes back an Eſtate to him and his Wife, the Remainder to* I. S. *and Dies, the Wife claims in, by the Second Eſtate, and Surrenders part to* I. S. *whether this gift be Surrendered to* I. S. *the Second Remainder Man?* Q.

A man ſeiſed of Lands in Fee, makes a Gift in Tail to Baron and Feme, the Remainder to *I. N.* the Baron diſcontinues, and takes back an Eſtate to himſelf and his Wife, the Remainder to *I. S.* and dies, the Wife claims in by the ſecond Eſtate, and Surrenders part to *I. S.* in the ſecond Remainder, and becauſe by taking the Second Eſtate, ſhe was remitted and the firſt remainder to *I. N.* alſo, therefore this gift is not Surrendered to the ſecond remainder-man, *viz.* to *I. S.* but only a grant of her Eſtate; for the Remainder is in *I. N.* 41 *Aſſ. pl.* 1. S.

Q. 5. *Tenant in Dower grants the Land to the Reverſioner by Deed, by the words,* Dedi, Conceſſi *and* Confirmavi *for her Life, Rendring Rent, and for default of payment a Re-entry; and an Aſſize was brought by the Tenant in Dower againſt the Reverſioner of the Land, he pleads the Deed, whereby ſhe had ratified, and confirmed the Land to him in Reverſion, then Seiſed of the Reverſion,* Habendum *for the Life of Tenant in Dower, Rendring* 5 l. *Rent which he was always ready to pay, but refuſing to uſe the Deed, as a Grant, claimeth it as a Surrender, whether it ſhall be taken as Grant, or as a Surrender?*

S. The opinion of the Court was, that it was a Surrender, and not a Leaſe, notwithſtanding the Condition and Rent reſerved, 44 *Aſſ. pl.* 3.

Q. 6. *If a man Surrenders his Leaſe for a leſſer Term, whether his former Leaſe be Surrendred or not?*

S. If Tenant for 20 years accepts a Leaſe of the Land for one year to commence immediately, this is a Surrender of his Leaſe for 21 years, for otherwiſe the Leſſor is not able, to make a Leaſe for one year, if the 21 years continue, *Anderſon* 2 *part n.* 38 *f.* 52.

Q. 7. *Whether a diſcontinuance can be made, by a Surrender, made to him in Reverſion?*

S. If I and my Wife are Joyntenants for Term of Life, in this Caſe I have not power to make a Surrender, for that the nature of a Surrender, is to give abſolutely all the Eſtate for Term of Life, which cannot be here done for the intereſt of the Wife, by

any

any words of Surrender, *Kelweys Rep. f.* 42. *a. pl.* 5.

8. *Whether the Acceptance of a Leaſe for years, can be a Surrender of an Eſtate for Life?* Q.

It was agreed that if Leſſee for Life doth accept of a Leaſe for years, It ſhall be a Surrender of his Eſtate for Life, *Aleyns Rep. f.* 59. *Bernard* v. *Bonner.* S.

9. *Tenant in Socage made a Leaſe for four years, and died, His Heir within the age of eight years, the Mother being Guardian in Socage, Leaſed by Indenture to the ſame Leſſee for* 14 *years, whether the firſt Leaſe be Surrendered, or not?* S.

It was holden, that in this Caſe the firſt Leaſe is Surrendred; but otherwiſe it is, if a Leaſe be made by Guardian in Nurture, *Leonard* 4 *pt. n.* 267. S.

10. *Tenant for Life grants his Intereſt to the Leſſor, whether this ſhall enure, as a Surrender, or a Grant?* Q.

It was ſaid, that it was adjudged 44 *Eliz.* in *B. R* that if Leſſee for Life grant his Intereſt to his Leſſor, that the ſame ſhall not enure, as a Surrender, becauſe there want words of Surrender, but ſhall enure by way of Grant only, *Leonard* 4 *pt. n.* 369. S.

11. *Whether one Tenant for years can Surrender to another Tenant for years?* Q.

The caſe was; that Leſſee for 30 years, Leaſed for 19 years, and then the firſt Leſſee, and one *B.* by Articles in writing made betwixt them, did conclude and agree that The Leſſee for 19 years, ſhould have a Leaſe for three years in the ſaid Lands, and others, S.

and

and that the ſame ſhould not be any Surrender of his firſt Term; to which Articles the ſaid Leſſee for 19 years did after agree, and aſſent unto; and it was the opinion of all the Juſtices of the Court, that the ſame was not any Surrender; and they alſo were of opinion, that one Termor could not Surrender to another Termor, *Leonard*, 1 *pt. n.* 420. *Pory and Allens Caſe. vid. an Excellent Caſe to the ſame Effect in Owen's Reports.*

Q. 12. *Whether by the Husbands Acceptance of a new Leaſe, the Term, which the Wife had, to anothers uſe, ſhall be deemed a Surrender?*

S. In an Ejectment the Caſe was thus; a Termor deviſed his Term to *I. S.* and made his Wife Executrix, and died; the Wife enters, and proves the Will, and takes another Husband, who takes a Leaſe of the Leſſor, and after *I. S.* the deviſee enters, and grants all his Eſtate to the Husband and Wife; and one of the Queſtions was, if by this acceptance of the new Leaſe, by the Husband, the Term, which the Woman had to another uſe, *viz.* to the uſe of the Teſtator, ſhall be deemed a Surrender; and the opinion of the Court was clearly without Argument, that it was a Surrender *Owen's Rep. f.* 56. *Carter* v. *Lowe.*

Q. 13. *A Surrender made by the Husband, to Leſſee for years in the Right of his Wifes Eſtate, whether good?*

S. A Woman Tenant in Tail, makes a Leaſe for 31 years, and after takes a Husband, who have Iſſue, the Husband, (being Tenant by the Courteſy) Surrenders, the Heir doth Ouſte the Leſſee, and the Leſſee brings

brings an Ejectment; and it was held, that the Surrender was good, and that the Privity was Sufficient, *Owen's Rep. f.* 32.

Q.

14. *A man Leaseth Land for Sixty yeres, the Lessee makes a Lease of part of the Term to the Lessor, Rendring a Rent, and then the Lessee makes a surrender to his Lessor, whether the second Rent be extinguished?*

S.

A man Leaseth Land for 60 years, and the Lessee Demises parcel of this Term to his Lessor, Rendring Rent, and after the Lessee Surrenders to the Lessor, adjudged, that the Second Rent Reserved is determined; but if a man Leases for years Rendring Rent, the Lessor grants the Rent to a Stranger, and after the Lessee makes a surrender to the Lessor, the Rent continues, and is not Extinct, 20 *E.* 4. 12.

Q.

15. *A Lease to B. for Life, Remainder to C. in Tail; B. infeoffs C. and his Wife in Fee, C. dies without issue, W. enters for a Forfeiture, whether the Entry of* W. *be Lawful or not?*

S.

A. Leaseth to *B.* for Term of his Life, the Remainder to *C.* in Tail, and after *B.* Tenant for Life, makes a Feoffment to *C.* and his Wife in Fee, and then *C.* dies without Issue, whereupon *W.* enters for a Forfeiture, and the Entry good; for the Feoffment was no Surrender to *C.* because his Wife was joyned with him, who had nothing in the Remainder with her Husband, 41 *Ass. pl.* 2.

Q.

16. *Whether there be any Difference betwixt a Surrender and a Resignation; and what that may be?*

There

There is a difference taken betwixt a Surrender and a Resignation as appears;

1. By *Cowel*, he tells us; that Resignation is used particularly for the giving up of a Benefice into the Hands of the Ordinary, otherwise called of the Canonists, [*Renuntiatio*] and tho' it signify all one in nature with the Word [*Surrender*,] yet it is by use more restraining to the yielding up of a Spiritual Living, into the hands of the Ordinary, and *Surrender* to the giving up of Temporal Lands into the hands of the Lord; and a Resignation may now be made into the hands of the King, as well as of the Diocesan, because he has *Supremam Authoritatem Ecclesiasticam*, as the Pope had by meer Usurpation in time past, *Plowden's Com. Grendon's Case, f.* 498. *vid.* the same in *Minshieu's* Dictionary, 622. 2. By the Author of the Terms of Law, who saith thus; Resignation is where an Incumbent of a Church resigneth, or leaveth to the Ordinary, which did admit him to it, or to his Successors, and that differeth from Surrender, when by that, he to whom the Resignation is made, hath no interest in the thing so resigned, but he, to whom the Surrender is made, hath by that the thing it self by the Surrender.

Renuntiatio, est juris proprij Spontanea Remissio, ex certis causis, & cum auctoritate Superioris facta. Corvinus's Jus canonicum L. 1. T. XI.

The

The Tenth Conveyance *by way of* Bargain *and* Sale, *by Deed indented and* Enrolled.

How this Conveyance by way of Bargain and Sale, is discharged, let the Reader learn from Doctor *Cowel*, who giveth this description thereof; Bargain and Sale is properly a Contract made of Manors, Lands, Tenements, Hereditaments, and other things, transferring the property thereof, from the Bargainor to the Bargainee; and addeth, that it ought to be for Money; saying farther, that this is a good Contract for Land, *&c.* and that Fee Simple passeth thereby, tho' it be not said in the Deed [*To have and to hold to him, and to his Heirs,*] and though there be no Livery and Seisin made by the Seller, so it be by Deed indented, Sealed, and enrolled, either in the County, where the Land lyeth, or within one of the King's Courts of Record at *Westminster*, within Six Months after the date of the Deed indented, *His interpreter, or Book containing the Signification of Words, Tit. Bargain and Sale.*

I. Obse-

I. *Obſervations.*

1. Upon the Statute of 27 *H.* 8. *cap.* 10. grounded is the Conveyance, by way of Bargain and Sale, to ſtand ſeiſed to uſes, for the ſaid Statute, whereſoever it findeth an uſe conjoyneth the poſſeſſion to it, and turneth it into like Quality of Eſtate, Condition, Rent, and the like as the uſe hath. Lord *Bacon* in his Tract, Intituled, *The uſe of the Law, p.* 54. *pr. Anno.* 1639.

2. The uſe is but the Equity and Honeſty to hold the Land in *Conſcientia boni viri*, as for Example; I and You, agree that I ſhall give you Money for your Land, and you ſhall make me Aſſurance of it. I pay you the Money, but you made no Aſſurance of it. Here although the Eſtate of the Land be ſtill in you, yet the Equity and Honeſty to have it is with me; and this Equity is called the uſe, upon which I had no remedy but in Chancery, until this Statute was made of 27 *H.* 8. and now this Statute conjoyneth and containeth the Land to him, that hath the uſe. I for my Money paid to you, have the Land it ſelf without any other Conveyance from you, and it is called a *Bargain* and *Sale*. Lord *Bacon Ibidem.*

3. The Parliament that made that aforeſaid Statute did foreſee, that it would be miſchievous, that mens Lands ſhould ſo ſuddenly upon the payment of a little Money be Con-

Conveyed from them, peradventure in an Ale-houſe, or Tavern, upon Strainable advantages, did therefore provide another Act in the ſame Parliament; namely the Statute of 27 *H.* 8. *c.* 16. that the Land upon payment of this Money, ſhould not paſs away, except there were a writing indented, made between the ſaid two parties, and the ſaid writing alſo within Six Months inrolled in ſome of the Courts at *Weſtminſter*, or in the Seſſions Rolls in the Shire, where the Land lyeth; unleſs it be in Cities, or Corporate towns, where they did uſe to inrol Deeds, and there the Statute extendeth not, *Bacon ibid.*

4. Deeds were inrolled at the Common Law, for the preſervation of them, altho' they did not paſs any Eſtate, as it is now by the Statute of Enrolments, *Stiles*'s *Rep. f.* 370. *Paſch.* 1653.

5. If a Deed expreſs a Conſideration of Money upon purchaſe made by the Deed, yet this is no Proof upon a Tryal, that the Monies expreſſed were paid, but it muſt be proved by Witneſſes, *Stiles*'s *Rep. f.* 462. *Thurle* v. *Madiſon.*

6. If Lands are paſſed by Money only, the Deed ought to be inrolled; but if for Money, and natural affection, the Land will paſs without Enrolment, *Stiles*'s *Rep. f.* 188. *Morris and Dixon's Caſe; and Ventris* 2 *pt. f.* 150 *Lade* v. *Baker. vid. the Caſe of Croſſing and Scudamore Paſch.* 23. *Car.* 2. *Rot.* 871.

7. If the Bargainor, after Bargain and Sale continues in poſſeſſion, he is Tenant at Sufferance; and if it be by agreement,

He

he is Tenant at Will, *Palmer's Rep. f.* 202. *Porſecey* v. *Blackman.*

8. Chattels Real, tho' granted by Bargain and Sale for Money are not Executed by the Statute of uſes, but only according to the Eſtates of Freehold, Sir *Thomas Jones's Rep. f.* 217. *Stevens* v. *Hutchins.*

9. The Enrolment is good, upon a Bargain and Sale, altho' the Grantee dies before the day of the Enrolment, *Anderſon* 2 *pt. n.* 88. *f.* 161.

10. If before the Enrolment of the Deed, the Bargainor makes a Feoffment to the Bargainee, there the Land ſhall paſs by the Feoffment, and not by the Enrolment, *Anderſon* 2 *pt. n.* 1 *f.* 3. *and n.* 88. *f.* 161, *and* 203.

11. Upon a Bargain and Sale (for Monies paid by the Bargainee,) to *E.* to the uſe of a Stranger, this laſt uſe is void, *Anderſon* 2 *pt. n.* 52. *f.* 81.

12. A Deed Poll is not within the Statute of Enrolment, *Littleton's Rep. f.* 23. *Roy* v. *Eaton*; Or if you will; a Bargain and Sale by Deed Poll, although it be Enrolled is not within the Statute of Enrolments, *Sc.* 27. *H.* 8. *c.* 16.

13. If Tenant for Life, bargains and ſells his Land by Deed Enrolled, altho' no Fee Simple paſſes, yet it is a Forfeiture, *Leon.* 4. *pt. n.* 251. *Sir William Pelham's Caſe.*

14. As to an Enrolment, *Debito modo Irrotulat. in Curia Canc.* &c. not good without alledging the Enrolment to be within ſix Months, or *Secundum formam Statuti. Aleyn's Rep. f.* 79. *King* v. *Somerland. vid.*

Ob-

Obſerv. 22. *in my firſt part, p.* 174. *Tit. Bargain and Sale.*

15. A man Bargains and Sells his Land by Indenture to another in Fee without mentioning any Summ, or other thing, this is good, for the Bargain and Sale doth imply, *Quid pro quo, Plowd. Com.* 533, *and Dyer* 90.

16. A Man had an uſe before the 27 *H.* 8. and ſells it by *Parol* for Money without Deed, and without any mention of the day of payment of the Mony and the Vendee enters, this is a good Bargain at the Pleaſure of the vendour, 21 *H.* 7. 18.

17. If Tenant in Tail Bargain and Sell his Land to *I. S.* by Indenture enrolled, and *I. S.* doth Re-bargain it to Tenant in Tail, he is tenant in Tail, as he was at the firſt, *Yelverton's Rep. f.* 51 *Freſhwater* v. *Rois.*

19. if a man Bargain and Sell his Land to *I.* N. for Money or other Recompence, and ſays not *To him and his Heirs*, yet this is a good Fee Simple, 27 *H.* 8. 5. Br. *Contract, Bargain & Achate* 1.

II. Queſtions *with their* Reſolutions.

Q. 1. *Whether upon a Bargain and Sale an uſe can be out of an uſe?*

S. A Woman for 400 *l.* paid to her, by her Son Bargains, Sells and Grants her Land to him by Indenture enrolled, and to his Heirs, to the uſe of the Bargainor for her Life, and after to the uſe of the Bargainee, and the Heirs of his Body, and after to the Heirs of the Bargainor for ever, and it was held, that this ſame uſe out of an uſe was void. *Dyer f.* 155, *and Crompton's Juriſd. of Courts f.* 53. *a Tit. Court of Chancery.*

Q. 2. *Whether in pleading a Bargain and Sale, it be neceſſary to ſhew in what Court it was enrolled?*

S. Debt upon a Leaſe for years, the Plaintiff derived his Title by a grant of the Reverſion, by way of Bargain and Sale in Fee, by means of the firſt Leſſor, and declares, that by indenture of ſuch a Date, ſuch a one granted, Bargained and Sold for Monies the Reverſion to him in Fee, which Indenture was enrolled ſuch a day, according to the form of the Statute, and for that he ſhewed not in what Court it was enrolled, and the Statute of 27 *H.* 8. ſpeaks of ſome ſpecial Courts, and it is not reaſon to put the Leſſee to ſuch infinit Labor to ſearch in all Courts as well at *Weſtminſter*, as in the Country with the Clerk of the Peace; for this Cauſe, after Verdict, A *nil cap. per billam* was entered,

entered, by the whole Court, *Yelverton Rep. f.* 213. *Woolby* v. *Pirley.*

3. *A Bargain and Sale without Enrolment, how it ſhall enure?* Q.

It was held by all the Juſtices of the Common Pleas, that if a man Seiſed of Land in Fee, makes a Leaſe for years, and after by Deed indented, Bargains and Sells the ſame Land to the Leſſee and his Heirs, without any Word or Gift, or Grant expreſſed in the Deed, by this the Eſtate of the Leſſee is not enlarged, if the Deed be not inrolled, for without Enrolment it paſſes not, and this can be no Confirmation; for if after the Statute of 1 *R.* 3. *c.* 1. *Ceſtuy que uſe*, by the words of *Bargain* and *Sale*, had only Sold the Land to the Stranger, but no Poſſeſſion had paſſed thereby to the Vendee, but the uſe only, *Daliſon's Ref. f.* 37. *pl.* 3. S.

4. *How a Bargain and Sale ſhall Commence, and when it ſhall be inrolled, according to the Statute of* 27 *H.* 8. *c.* 16? Q.

The Statute of 27 *H.* 8. is that no Land, Tenement, nor Hereditament, ſhall Paſs by a Bargain and Sale, if it be not by Indenture and Inrolled within Six Months, next after the date of the ſame Indenture; And an indenture of Bargain and Sale was enrolled the laſt day of the Six Months, not accounting the day of the Date of the Indenture for part of the ſix Months, and the opinion of the Court was, that the Enrolment was good enough, for the day of the Date ſhall be accounted parcel of the ſix Months limited by the Statute, for the date, and the day of the Date is all one, and the S.

Date is all the day, *Daliſon's Rep. f.* 41. *pl.* 18.

Q. 5. *Bargain and Sale by Deed indented, made to* I. S. *and before Enrolment a Bargain and Sale is made to another, the latter firſt inrolled, and then the former is ſo too, within the ſix Months, whether the enrolment of the Deed be good, or not?*

S. It was ſaid by the Juſtices, that if a Man by Deed indented Bargain and Sell his Land to a man, and before inrolment of it, he Bargains and ſells it to another, and the Laſt is firſt enrolled within the Six Months, and after the firſt Deed is inrolled within the Six Months, the enrolment of the Deed is good enough, *Daliſon's Rep. f.* 41. *pl.* 18.

Q. 6. *What leaſe is Capable of a Releaſe, to make a Bargain and Sale?*

S. In an Ejectment upon a Special verdict, the Sole point was, whether a Leaſe for a year, upon no other Conſideration, than reſerving a Pepper Corn, if it be demanded, ſhall work as a Bargain and Sale, and ſo to make the Leſſee capable of a Releaſe? And it was reſolved, that it ſhould, and that the Reſervation made a ſufficient conſideration to raiſe an uſe, as by Bargain and Sale. *Ventris 2 part, f.* 35. *Anonymus.*

Q. 7. A. *Seiſed of a Rent Charge in Fee, (the Rent being Arrear) by indenture of Bargain and Sale, duly enrolled, grants the ſaid Rent and Arrears thereof to* B. *whether this be be a good Grant for the Rent and Arrears?*

It

It was held, that the Arrears being a thing in Action, are not Grantable over, nor yet the Rent, for want of consideration, there being no Money Alledged to be paid; and it cannot be good, by way of Bargain and Sale, on the Statute without Money, *Raymonds Rep. f.* 201. *Guilliams* v. *Mannington.* S.

8. *Whether the Enrolment of a Bargain and Sale, ought to be within six Months of the Date and not of the Delivery?* Q.

It was said by *Weston* in an Argument of the Case of Enrolments, upon the Statute of 27 *H.* 8. *cap.* 16. that if a Deed indented be written one day, and delivered to the Bargainee a Month after the delivery, this is good by the Statute, which *Brown* and *Dyer* denyed; For the Statute makes the Law in this point, which speaks of the Date; and the Date is one thing, and the delivery is another: but *Brown* said, that if the Deed be inrolled the same day, it bears Date, this is good notwithstanding that the Statute is, after the Date, for if it be before, it is within the six Months, for every day is within the six Months; *Quod fuit Concessum*, a Case Reported by Justice *Dalison*, *Anno* 4 *Eliz.* S.

9. *Two Joyntenants seised* per my, & per tout, *one of them by Deed, doth Bargain and Sell*, Totum Statum suum, *the other dies, before the Enrolment, whether a Moiety only passes, or not?* Q.

Williams Justice; there is a passing in Right, and a passing in possession; and these are two several, and distinct things, for S.

where there are two Jointenants, they are ſeiſed *per my & per Tout*; if one of them by Deed indented Bargains and Sells, *Totum Statum ſuum*, and the other dies before enrolment, there paſſes only a Moyety in this Caſe, *Bulſtrode Rep. f.* 3 *Proctor* v. *Johnſon, See my* 1 *pt. Queſtion* 2. *p.* 175.

Q. 10. *Two Joyntenants be, and one of them Bargains and Sells the Land by Deed indented, and dies before Enrolment, whether his Fellow ſhall have it by Survivorſhip?*

S. If two Joyntenants be, and one of them bargains and Sells the Land by Deed indented, and dies before any Inrolment, his companion ſhall not have it by Survivorſhip, and the Reaſon is, for that the uſe paſſes from the Sealing and Delivery of the Deed; If it be after enrolled, according to the Statute, *Anderſon* 2 *part n.* 88. *f.* 161.

Q. 11. *A Bargain and Sale is made with a Letter of Attorney to make Livery of Seiſin, and before Enrolment the Livery is executed, whether the Grant ſhall take Effect, by the Livery, or the Enrolment?*

S. If a man, in Conſideration of Mony paid, makes a deed of Gift, Grant, Bargain and Sale of his Lands to another, and his Heirs, by Deed indented, with a Letter of Attorny to make Livery of Seiſin, If Livery be thereupon made, before Enrolment there it has been adjudged to paſs by the Livery of Seiſin, and not by the Enrolment, *Popham's Rep. f.* 49. *Collard* v. *Collard.*

Q. 12. *Whether a Bargain and Sale for Divers Cauſes, and Conſiderations can be good in Law, without a Sum of Money?*

The

The opinion of the Juſtices was, that a Bargain and Sale for divers Cauſes and Conſiderations is not good without a Sum of Money; and by *Windham*, Bargain and Sale, *pro quadam pecuniæ Summa*, altho' no Money be paid is good enough, for the payment or not payment, is not traverſable; and by *Periam*; if *pro quadam pecuniæ Summa*, be not in the Indenture of Bargain and Sale, yet the payment thereof is averrable, *Leonard* 1 *pt. n.* 237. *Smith and Lane's Caſe, vid. Obſerv.* 24 *in my firſt part, p.* 174; *and Queſtion* 11. *p.* 179. 1 *part and Cro. Jac. f.* 127. *Osborn and Bradſhaw* v. *Churchman.* S.

13. *Leſſee for the Life of another Bargains and Sells by Deed indented and inrolled, and afterwards Levies a Fine to the Conuſee,* Sur Conuſance de droit come ceo, *&c. whether this be a Forfeiture of the Bargainees Eſtate?* Q.

It was holden by the whole Court, that it was a Forfeiture of his Eſtate; for when the Bargainee, being now Tenant for the Life of another, accepts a Fine of a Stranger, *Sur Conuſans de droit come ceo,* &c. that he admits the Fee in him by matter of Record; otherwiſe it is of a Fine *Sur* Releaſe, *Leonard* 3 *pt. n.* 349. S.

14. *Whether Land ſhall paſs from the Bargainor to the Bargainee; the Bargainor, having not at the time of the Bargain and Sale made, any Eſtate, or Intereſt therein to contract for it?* Q.

If I Mortgage Land, and after Covenant with *I. S.* in Conſideration of Money, which I receive of him, that after I have entered for the Condition broken, I will ſtand Sei- S.

ſed to the uſe of the ſame *I. S.* and I enter, and this Deed is enrolled, and all within the Six Months, yet nothing paſſeth away, becauſe this Enrolment is no new Act, but a perfective Ceremony of the firſt Deed of Bargain and Sale; and the Law is more ſtrong in that Caſe, becauſe of the vehement Relation, which the Inrolment hath to the time of the Bargain and Sale, at what time he had nothing but a naked Condition. Lord *Bacon* in his Elements of the Common Laws, *Reg.* 14. *p.* 59. *vid. Cro. Eliz. f.* 402. *Yelverton* v. *Yelverton.*

Q. 15. *Land given in Tail to* A. *the Remainder in Fee to his Siſters, being his Heirs at the Common Law.* A. *made a Deed in this manner,* viz. *I the ſaid* A. *have given, granted and confirmed, for a certain piece of Money,* &c. *without the words, Bargained and Sold; and the* Habendum *was to the Feoffee with warranty againſt* A. *and his Heirs; and a Letter of Attorney was to make Livery and Seiſin: And the Deed was in this wiſe,* To all Chriſtian People, *&c. and the Deed was inrolled within a Month, after the making of it; and the Deed was indented, although the words of the Deed were in the form of a Deed Poll; and 4 Months after the delivery of the Deed, the Attorney made Livery of Seiſin,* A. *dyed without Iſſue, and the Siſters entered, and the Feoffee Ouſted them, whereupon they brought an Action of Treſpaſs, whether this Conveyance ſhall enure, by way of Bargain and Sale, or of Feoffment?*

The

The opinion of the whole Court was for the Plaintiff; for here is not any diſcontinuance for the Conveyance is by Bargain and Sale, and not by Feoffment, becauſe the Livery comes too late, after the Enrolment, and then the Warranty ſhall not hurt the Siſters; and altho' that in the Deed there be not any word of Indenture, and alſo that the words are in the firſt perſon, yet in as much, as the Parchment is indented, and both the parties have put their Seals to it, it is ſufficient. Alſo it was clearly agreed by the Court, That the party ought to be in, by way of Bargain and Sale, and he hath not Election, to take the Land by way of Livery; but when all is in one Deed and takes effect equally together, in ſuch Caſe the grantee hath Election, but here in this Caſe the Bargain and Sale, (the Deed being enrolled) doth prevent the Livery, and takes its full effect before, *Leonard* 3 *part n.* 39. S.

The

The Eleventh and Laſt Conveyance, *by way of* Deviſe, *or* Will *in Writing.*

A Teſtament is thus defined in Mr. *Plowden's* Commentaries: A Teſtament is a Witneſs of the mind, and it is Compound of theſe two words, *Teſtatio*, and *Mentis*, which ſo Signifieth; and truth it is, that a Teſtament is a witneſs of a man's mind, but that it is a Compound word, *Aulus Gellius*, *Lib.* 6. *cap.* 12. doth deny the ſame to an Excellent Lawyer, one *Servius Sulpitius*, and ſaith, that it is a Simple word, as are theſe, *Calciamentum*, *Paludamentum*, *Paviamentum*, and divers ſuch like. And much leſs is *Aggreamentum*, a Compound word of *Aggregatio* and *Mentium*, as is ſaid in *Com. f.* 5. *a Fogaſſa's* Caſe, for there is no ſuch Latine word, *Simple* or *Compound*: but it may nevertheleſs, ſerve well for a Law Latine word, and therefore a laſt Will or Teſtament has been better defined by ſeveral Legiſts.

By *Ulpian* thus; *Teſtamentum eſt mentis noſtræ juſta Conteſtatio, in id Solemniter factum, ut poſt mortem noſtram valeat, Tit. de Teſtamentis.*

By *Corvinus* in this manner; *eſt voluntatis noſtræ juſta Sententia, de eo quod quis de bonis ſuis poſt mortem ſuam fieri velit. Elementorum*, Lib. 2. Tit. 10.

By *Cowel* in this wiſe; *Teſtamentum eſt voluntatis noſtræ Sententia de eo quod quis poſt mor-*

mortem ſuam fieri voluit. His Inſtitutes Lib. 2. Tit. 10. *p.* 110.

And *by the Author*, of the Terms of Law after this manner; a Teſtament is the true declaration of our laſt will, of that we would to be done, after our Death, *f.* 281. *by Tit. Teſtament.*

I. *Obſervations.*

1. This Courſe of Conveyance, by Will in Writing, was firſt ordained by the Statute made 32 *H.* 8. before which Statute no man might give Land by Will, except it were in a Borough Town, where there was an eſpecial Cuſtom, that men might give their Lands by Will, as in *London* and many other places. Lord *Bacon* in his Tract Intituled, *The uſe of the Law*, *p.* 56.

2. The not diſpoſing or giving of Land by Will, was thought to be a defect at Common Law, that men in wars, or ſuddenly falling Sick, had not power to diſpoſe of their Lands, except they could make a Feoffment or levy a Fine, or ſuffer a Recovery; which lack of time, would not permit, and for men to do it by theſe means, when they could not undo it again was hard; Beſides even to the laſt Hour of death, mens minds might alter upon further proofs of their Children or Kindred, or increaſe of Children, or debt or defect of Servants or Friends to be altered, Lord *Bacon Ibidem.*

3. For

3. For which cauſe, it was reaſon, that the Law ſhould permit him to reſerve to the laſt inſtant, the diſpoſing of his Lands, and to give him means to diſpoſe it, whereupon the aforeſaid Statute of 32 *H.* 8. was made to give men power to give Lands by Will in this Sort. 1. It muſt be by Will in Writing. 2. He muſt be Seiſed of an Eſtate in Fee Simple; for Tenant for term of another mans Life, or Tenant in Tail, cannot give Land by Will by that Statute of 32 *H.* 8. He muſt be ſolely Seiſed, and not joyntly with another, and then being thus ſeiſed, for all the Land he holdeth in Socage Tenure, he may give it by Will, except he hold any piece of Land in *Capite*, by Knights Service of the King; and then laying altogether, he may give but two parts by Will; for the third part of the whole, as well in *Socage* as in *Capite*, muſt deſcend to the Heir, to anſwer Wardſhip, Livery and primer Seiſin to the Crown, *Lord Bacon*.

4. A Deviſe of Lands to one, and his Heirs Males, by a mans Teſtament, the Deviſee hath an Eſtate Tail, *Ratione favoris voluntatis*; but otherwiſe it is upon a Grant, or Feoffment, without expreſſing the Corps, or Body, 27 *H.* 8. 27.

5. A deviſe of Lands to *I. N.* in Fee, and if he dies without Heir, that it ſhall remain to *I. S.* in Fee, this is a void Remainder, becauſe it depends upon a Fee Simple, 19. *H.* 8. 8

6. A

6. A Deviſe of Lands to *A.* and the Deviſor is afterwards diſſeiſed, and dies, this Deviſe is void, for a Deviſe cannot take effect, where the deviſor dies not Seiſed, 39 *H.* 6. 18.

7. A Deviſe made to an Infant *en ventre ſa Mere*, and the Deviſor dies, this is a good Deviſe, and yet the Infant is not in *Rerum natura*, neither at the time of the Deviſe, nor at the time of the Deviſors Death, 11 *H.* 6. 12. *vid. infra Obſerv.* 18.

8. A Deviſe of Lands to *I. N.* he ſhall not have the Land but for Term of his Life; and if it be deviſed to him *in perpetuum*, or to him or his Aſſigns, this is a Fee Simple, 22 *E.* 3, 16.

9. A Deviſe of Lands to another for to give, ſell, or to do with it at his Will and pleaſure, this is a good Fee Simple, for the Intent of the Deviſor ſhall be ſo taken, 7 *E.* 6. *Br. Deviſe* 39.

10. If a Deviſe be to one in *feodo Simplici*, the Deviſee hath a Fee Simple, *Br. Deviſe* 29 *in Fine.*

11. A deviſe of Land to a man's Wife, to diſpoſe at her Will and pleaſure, and to give to which of her Sons ſhe pleaſeth, ſhe has an Eſtate for Life, with an Authority to diſpoſe it to one of her Sons, *Latch's Rep. f.* 134. *Daniel* v. *Upley.*

12. A Will is made, and the party ſays, *he will not make his Will*, this is no Revocation, *Owen's Rep. f.* 80. *Gibſon* v. *Muteſſe.*

13. A

13. A Deviſe, that his Wife ſhall have the Occupation and profits, during her Widowhood, is a good Deviſe of the Land it ſelf, during ſuch time, *Owen's Rep. f. 6* and 7. *Haverington's Caſe.*

14. By the Deviſe of the free uſe of Land the Intereſt in the Land, and the Right to take the Profits paſs, *Sanders* 1. *part f.* 186. *Cooke* v. *Gerrard, vid. infra Obſerv.* 25.

15. An Eſtate deſcendible and determinable, upon the Death of Tenant in Tail cannot be deviſed within the Statutes of 32 *H.* 8. *c.* 1. *and* 34 *H.* 8. *c.* 5. *Sanders* 1 *pt. f.* 261. *Took* v. *Glaſcock. vid Bulſtrode* 3. *pt.* 185. *Cooper* v. *Franklin.*

16. An Eſtate for anothers Life is not deviſable, *Sanders* 1 *pt.* 261. *Took* v. *Glaſcock.*

17. A Deviſe to the Eldeſt Son, tho' it be by words of Condition, yet it is a limitation, and upon this limitation it ceaſeth, without Entry, or Caim, *Carters Rep.* 171. *Rundale* v. *Eeley.*

18. A Deviſe of Land to an Infant *en Ventre ſa mere* is good, if conſtrued by way of Executory deviſe, *Carter's Rep. f.* 5. *Davies* v. *Kempe, in Bret and Ridgden's Caſe, Plowdens Commentaries*, where a man deviſeth Lands to an Infant *en ventre ſa mere*, ſo as it may be conſtrued an Executory and future Deviſe, it is good; but if *en ventre Sa mere* be conſtrued generally and immediatly, the Books are, 'tis naught becauſe there is no immediate Deviſee to take it, *vid. Supra. Obſerv.* 7. *Infra Obſerv.* 33.

19. A

19. A Deviſe of Black Acre to *A.* in Fee, and after by the ſame Will, deviſeth a third part to *B.* for Life or in Tail, this Deviſe to *B.* doth not make void all to *A.* but *B.* ſhall have the Eſtate in Poſſeſſion, and *A.* in Remainder, *Carter's Rep. f.* 174. *Rundale* v. *Eeley.*

20. A man has two Houſes in *A.* and *B.* and deviſes his Houſe in *A.* and his Lands in *B.* to E. the Houſe in *B.* paſſes not, *Anderſon* 2 *pt. n.* 69. *f.* 123.

21. A deviſe to the Heir and his Heirs is void, *Anderſon* 2 *pt. n.* 6. *f.* 11.

22. A Deviſe of Lands to one with charge, is a deviſe in Fee, *Jones's Rep. f.* 102. *Lee* v. *Withers. vid. Co. Lib.* 6. *Collier's Caſe, and Cro. Car.* 157. *Anſley* v. *Chapman.*

23. A deviſe is to be governed by the Intention, whether it be expreſſed by apt words, or not, Sir *Tho. Jones's Rep. f.* 172. *Holmes* v. *Meynell.*

24. Words in a Will, that worketh or tends in Diſinheriſon ought to be cleer, and ſtrictly taken, Sir *Thomas Jones's Rep. f.* 112, 114. *Gold* v. *Goddard*; *and Freak* v. *Lee. vid. Cro. Car.* 157. *Anſley* v. *Chapman, and* 447 *Wilkinſon* v. *Maryland, Cro. Eliz.* 742. *Taylor* v. *Sayer and Dyer* 371.

25. A deviſe of the profits of the Land, is a good deviſe of the Land it ſelf, *Bulſtrode* 3 *pt.* 105. *Blamford* v. *Blamford, vid. Supra. Obſervations* 13 *and* 14.

26. A man hath two Sons, named *John*, by Will he deviſes Land to *John* his Son; this is a void Deviſe for the uncertainty in it, *Bulſtrode* 1 *pt. f.* 62. *Wood* v. *Ingerſole.*

27. When

27. When the intent of the Teſtator or Deviſor in his Will, does not agree with the Rules of the Law, his intent is void, *Bulſtrode 1 pt. f. 63 Wood* v. *Ingerſole.*

28. A Will Written before the death of the Teſtator, although it be never ſhewn unto him, is good within the Statute of *32 H. 8. c. 1. of Wills. Caſe reported by Bendloe Anno 4 & 5, Ph. & Mar.*

29. A Deviſe of a Houſe *cum terris pertinentibus*, ſhall paſs Lands, which have been uſed five or ſix years with the Houſe, but if they were divided half a year before the Deviſe it is otherwiſe, although there was a ſufficient Union before for the making a Reputation, *Palmer's Rep.* 375, *Inter Loftus and Barker.*

30. A Deviſe of a Term or of Land, or of the Occupation of the Land, are all one and good, *Palmer's Rep. f.* 335. *Child and Balies Caſe.*

32. A Will Gnawn in pieces by Rats, yet by the help of the pieces put together, was afterwards proved and good, *Allen's Rep.*

33. A Deviſe to an Infant *en ventre ſa mere*, for 15 years, the Remainder over, is good by way of Executory Deviſe, *Raymond's Rep. f.* 83. *Bate* v. *Amhurſt*, *vid. Supra Obſerv.* 18.

34. An Eſtate *in futuro* and a Contingent precedent, makes an Executory Deviſe, *Raymond's Rep.* 83. *Bate* v. *Amhurſt.*

35. A Reverſion ſhall paſs in a laſt Will and Teſtament, by the words, *All my Hereditaments*, *Ventris* 2 *pt.* 286. *Willowes* v. *Lydcot.*

36. Lands

36. Lands Deviſed for the payment of Debts and Legacies, and the Reſidue of the Perſonal Eſtate is given to the Executors, after Debts, and Legacies paid; the perſonal Eſtate ſhall notwithſtanding, as far as it will go, be applied to the payment of the Debts and Legacies, and the Land charged no farther then is neceſſary, to make up the Reſidue, *Ventris* 2 *pt. f.* 349. *Anonymus.*

37. Lands may be Deviſed to the uſe of another, but if no uſe be limited, they will lodge in the Deviſee; for a Deviſe doth imply a Conſideration, *Ventris* 2 *pt.* 312. *Burchant* v. *Durdant.*

38. One may revoke a Will in Writing by Parol, and may revive it again by Paroll, as 'twas ſaid by *Rolls* Chief Juſtice, *Stiles's Rep.* 418. *Bridges and the Lord Chandois their Caſe.*

39. In a Will a thing implied ſhall not Controll a thing expreſſed, *Leonard* 3 *pt. n.* 218. *Incheley and Robinſon's Caſe.*

40. Where there is a Cuſtom to paſs Lands by Paroll, or *nuncupative* Will; yet they ſhall not paſs whithout expreſs, and plain words, *Ventris* 2 *pt.* 286. *Willowes* v. *Lydcot.*

II. Queſtions *with their* Reſolutions.

Q. 1. *Deviſe of Lands to* I. S. *for Life Remainder to his Heirs Males, and to their Heirs Males of their Bodies, the Deviſor dies,* I. S. *has Iſſue a Daughter, who has Iſſue a Son, and then* I. S. *dies, whether the Son of the Daughter ſhall Inherit the Land?*

S. Adjudged, that the Son of the Daughter ſhall enjoy the Land, altho' he conveys all by the Heir Male, *Ratione voluntatis Deviſoris*; otherwiſe it is where Lands are given by way of Grant, or Feoffment, or any other way at the Common Law, 11 *H.* 6. 12. *Br. Deviſe* 32. 30 *H.* 8. *Br. Deviſe* 29.

Q. 2. *Whether Survivorſhip can take place in Deviſes?*

S. A man Deviſeth his Lands to two men and their Heirs, and dies, and then one of the Deviſees dieth, and the other ſurvives, he ſhall not have the whole by Survivorſhip, but only one Moyety, and the Heir of the other Joyntenant ſhall have the other Moyety; for it was the intent of the Deviſor, according to the Judgment of *Audeley* Chancellor of *England*, 30 *H.* 8. *Br. Deviſes* 29.

Q. 3. *A Tenant for Life, Remainder over in Fee, Tenant for Life refuſeth to take by the Deviſe, whether he in the Remainder after the death of* A. *may Lawfully enter?*

If a man Deviſeth Lands to *A.* for Life, the Remainder over to *B.* in Fee, and dies, the firſt

firſt Deviſee *A.* refuſeth to take any bene- *S.*
fit by the Deviſe, yet after his death *B.* ſhall have it, and he may well enter, and enjoy the Lands according to the Deviſe; for it takes effect by the death of the Deviſor; contrary it is upon a Grant, if the firſt refuſeth the Livery of Seiſin, he in Remainder has no remedy; for a Grant by Feoffment cannot take effect, but by the Livery. 37 *H.* 6. 37. *Br. Deviſes* 14.

4. *Whether a perſon can take an Eſtate for Life, by Implication?*

If a Man Will that his Son *I.* ſhall have his *Q.*
Land, after the Death of his Wife, and dies, here the Wife of the Deviſor ſhall have the *S.*
Land firſt for Term of Life; ſo like wiſe if a man deviſeth his Goods to his Wife, and that after the Deceaſe of his Wife, his Son and Heir ſhall have the Houſe, where the Goods are, there the Son ſhall not have the Houſe, during the life of the Wife: for it doth appear, that his intent was, that his Wife ſhould have the Houſe alſo for Term of her Life, notwithſtanding it were not deviſed by expreſs words, 29 *H.* 8. *Br. Deviſes* 48. 13 *H.* 7. 17 *Br. Deviſes.* 52. *and the Author of the Terms of Law f.* 122 *b. Tit Deviſe.*

5. *A Deviſe of Land to a man by ſuch words,* Sc. *to him, and to his; or by ſuch words,* *Q.*
Sc. *to him to do his will therewith, whether the Deviſee can rightly claim a Fee Simple in the ſaid Land?*

By the opinion of *Fitz. Herbert* and other Juſtices of the Common Pleas, that if a man *S.*
deviſeth Lands to another by ſuch words, *Sc.*

To him and his, or by such words, *&c. To him to do his Will therewith*, that the Devisee in such cases has an Estate in Fee Simple in the said Lands, *Bendlows Rep. f.* 11. *pl.* 9.

Q. 6. *A man makes his Will. and Willeth that his Executors, shall sell his Land*, [*Or that if a man by his Will deviseth his Land to his Executors to be Sold*,] *and dies, and one of the Executors refuseth the Administration of the Goods of the same Testator before the Ordinary, whether the other Executor can sell this same Land, to the Refusing Executor*;

S. It was the Opinion of the Justices of the Common Pleas, that the other Executors cannot Sell the same Land to that Executor, that hath refused the Administration, by the Statute of 25 *H.* 8. *c.* for that Executor, which refuseth is yet party, and Privy to the Testament, and one of the Executors at his pleasure, *Bendlow's Rep. f.* 15. *pl.* 18. *vid. Trin.* 41 *E.* 3. 22. *and Trin.* 36 *H.* 6. 8.

Q. 7. *A Devise to* I. S. *of Lands holden in Socage by these Words, I release all my Lands to* I. S. *and his Heirs, whether* I. S. *has a Fee Simple in these Lands?*

S. It was the Opinion of the Justices of the *C. B.* That if a man by his last Will in Writing deviseth his Lands held in Socage by these words, *&c. I Release all my Lands to* A. *and his Heirs*, that this *A.* has an Estate in Fee Simple in those Lands by this *Devise*, *Bendloes Rep. f.* 30. *pl.* 50.

Q. 8. *A Devise of Lands to his two Sons to be Equally divided between them, whether they be Joyntenants, or no?*

Mour-

Mountague Chief Justice of the Common Pleas held, that if a man by his last Will in Writing deviseth his Land held in Socage to his two Sons, *Equally to be divided between them*, that now after the death of the Devisor, the Devisees are Jointenants of the Land, till Division was made, for that the words *Sc. To be divided*, are words in the Future Tense, *Bendloes Rep. f.* 36 *pl.* 63. *Vide* a Resolution touching the word *Equally*, *Leon.* 3 *pt. n.* 44. *Dalison f.* 77. S.

9. *Lands holden in Socage, are Devised to* I. S. *to perform his last Will and Testament, and to pay his Debts and Legacies, whether by this Devise* I. S. *upon Performance of the things aforesaid, hath a Fee Simple in the Lands?* Q.

It was held by the Justices of the Common Pleas, that if a man by his last Will in writing deviseth his Lands holden in Socage, to another, to perform his last Will and Testament, and to pay his Debts and Legacies, that by this Devise, the Devisee hath an Estate in Fee Simple in the said Lands, if he perform the Will, *&c.* accordingly, *Bendloes Rep. f.* 37. *pl.* 66. S.

10. *Whether in a Will, Acres of Meadow some Miles distant from a Messuage will pass by the Word Appurtenances?* Q.

Sir *R. K.* seised of a Messuage, and of two Acres of Meadow, four miles distant from the Messuage held in Socage, Deviseth by his Will, the Messuage *cum pertinentijs, seu aliquo spectantibus*, to his Wife, during her Widowhood with divers Remainders over; seeing the Devisor was seised of the Messuage, and two Acres, four Miles distant, S.

which were occupied for Seven years, with the Meſſuage, If by this Deviſe of the Meſſuage with the Appurtenances, the two Acres paſſed; and it was reſolved by the Court, that the two Acres did not paſs, by the deviſe of the Meſſuage, with the Appurtenances, for the Law will not draw all the Land Occupied with a Houſe, and ſo it has been adjudged before, *Littleton's Rep. f.* 5. *Kene* v. *Allen.*

Q. 11. *A Deviſe to Five Men, their Heirs, and Aſſigns, all of them to have part, and partlike, the one to have as much as the other, whether they be Joyntenants or Tenants in Common?*

S. A Man makes his Teſtament, and gives to Five Men, their Heirs and Aſſigns, certain Houſes in *Fleet-ſtreet, all of them to have part and partlike, the one to have as much as the other*; and whether they were Joyntenants, or Tenants in Common, was the Queſtion? And it was Adjudged and Reſolved, that they were Tenants in Common, *Littleton's Rep. f.* 46. *Jaques and Thorogood* v. *Collins.*

Q. 12. *By a Deviſe of Lands, Meadows and Paſtures, whether a Houſe paſſes?*

S. In an Ejectment the Jury found, that *I. S.* being ſeiſed of a Capital Meſſuage in the County of *Oxford*, and alſo of a Houſe and Land in *Walter* in *Hartfordſhire*, makes a Leaſe for years of his Houſe and Land in the County of *Hartford*, and then by Will does Deviſe his Houſe in the County of *O.* together with all other his Lands, Meadows, Paſtures, with all and ſingular their Appurtenances in *Walter* in the County of *H.* to

John

John Ewer, and whether the *Houſe* in *Walter*, in the County of *H.* does paſs or not, was the Queſtion. It was adjudged that the Houſe did not paſs, for by the particular mentioning of all his Lands, Meadows and Paſtures, the Houſe is Excluded, *Owen's Rep. f.* 74, 75. *Ewer* v. *Heyden, vid. Cro. Eliz. f.* 476. *Ewer* v. *Heyden.*

13. *What paſſes by this Word* [*Lively-Hood*] *in a Will according to the Cuſtom of* London? Q.

Bendloes Sergeant moved this Caſe, A Man Seiſed of Lands and Tenements in *London* Deviſeth them, by theſe words; *I Will and Bequeath unto my Wife Alice, my Livelyhood in* London *for the Term of her Life.* By this Will the Lands in *London* paſs to the Wife, by this word *Lively-hood*; And *Brook* Juſtice ſaid, that it was in Ancient time uſed in divers places of this Realm, and had been taen for an Inheritance, to which *Dyer* agreed, *Owen's Rep. f.* 30. 4 *&* 5 *Ph. and Mary.* S.

14. *A Man having two Daughters, his Heirs, doth Deviſe his Land to them in Fee; what Eſtate have they by this Deviſe?* Q.

If a Man Deviſeth Lands to his Eldeſt Son, it is void, and he is in by deſcent; It was holden by the Court, that they ſhall hold by the Deviſe, becauſe he gives another Eſtate to them then deſcended; for by the Deſcent each of them had a diſtinct Moyety, but by the Deviſe they are Joyntenants, the Survivor ſhall have all. And *Fenner* ſaid, If a man had Land in *Burrough Engliſh*, and Guildable Lands, and Deviſed all his Lands to his two Sons, and dies, both of them ſhall take joyntly, and the S.

Younger ſhall not have a Diſtinct Moyety in *Burrough Engliſh*, nor the Elder to the Guildable Land, but they are both Joyntenants, *Owen's Rep. f. 65. Hill. 37 Eliz.*

Q. 15. L. *Seiſed of Lands in Fee, deviſeth it to two Perſons Equally and to their Heirs, whether this makes them Joyntenants, or Tenants in Common?*

S. All the Court held, that they were Joyntenants and not Tenants in Common, *Anderſon 2 pt. n. 10. f. 17.*

Q. 16. *A Man deviſes his Land to his Wife, during her Life, Remainder over* Exitui ſuo, *And he has a Son, and a Daughter and dies ſeiſed, whether the Daughter ſhall take any part of the Land?*

S. It was adjudged, that the Daughter ſhould take nothing notwithſtanding it was a Legacy; and the Judges held that this word *Exitui*, is no other in Senſe then *un Iſſue*, and not more; And then it cannot be known what Iſſue of the Iſſues ſhall be intended by the Will, to have this Land; but that is ſo uncertain, that the Jugdes cannot know, how to do Right; for if it be intended to one, it cannot be known, to which of them, and therefore it ſhall be taken as a void paroll, notwithſtanding it is by a Will, which many times ſhall be taken, according to the intent, as by many of our Caſes in our Books may be ſeen; but this is always to be intended, when the intent of the party, by the words contained in the Will, may be known, otherwiſe not, *Anderſon 2 pt. n. 81. f. 134.*

17. *A Deviſe to ſell Lands, without naming, who ſhall ſell them, whether the Deviſe be void or not?* Q.

Upon a ſpecial verdict the Caſe was ſuch; *I. S.* ſeiſed in Fee, Deviſeth that his Lands ſhall be ſold, after his Wifes Death, and that ſhe ſhall diſpoſe the Monies to divers of his Kindred, and made his Wife Executrix, and dies; the Executors of the Wife ſell to *I. N.* and his Leſſee brings an Ejectment againſt the Heir of the Deviſor; the whole Court was of Opinion, that the Deviſe was void, for not naming the vendor, Sir *Thomas Jones's Rep. f.* 25, 26. *Pit* v. *Pelham.* S.

18. *A Deviſe of a Remainder* proximo de ſanguine *of the Deviſor, and at the time of the falling of it, are two Daughters, whether one, or both ſhall have it?* Q.

It was the Opinion of *Dodridge* and *Haughton*, that both ſhall have it; but by *Mountague*, the elder Daughter, *Palmer's Rep. f.* 11, 12, 13. *Periman and Biford's Caſe.* S.

19. *By a Deviſe of the Reſt of all my Lands, what paſſes?* Q.

One being Seiſed of the Manor of *D.* and other Lands in the County of *S.* by his Will in writing deviſed the Manor to *A.* for ſix years, and part of the other Lands to *B.* in Fee, and then comes in this Clauſe, and the reſt of all my Lands in the County of *S.* or elſewhere, I give to my Brother and the Heirs of his Body; and the Queſtion was, whether the Reverſion of the Manor paſſed, or no; for it was ſaid, that the word *Reſt* did extend only to ſuch Lands S.

as

as were not Deviſed before; but it was adjudged, that the Reverſion of the Manor paſſed by the Deviſe, *Aleyn's Rep. f.* 28. *Wheeler* v. *Walroon.*

Q. 20. *A power reſerved to* D. *to revoke a Deed by writing, Subſcribed and Sealed by him, in the preſence of two or more Credible Witneſſes in expreſs words,* &c. D. *makes his will in Writing in the Preſence of two Credible Witneſſes, without making Expreſs Revocation, whether this be a good Revocation?*

S. It was Adjudged, that it was a good Revocation; and the Will a good Execution of the power, *Raymond's Rep.* 205,301. *Guy* v. *Dormer.*

Q. 21. *Lands are granted to two men, and the Heirs of one of them, whether the Reverſion be Deviſable?*

S. If Lands be granted to two, and the Heirs of one of them; it was held by *Windham* and *Twiſden* Juſtices, that the Reverſion is not deviſable. *Twiſden*, When there are two Joyntenants, and to the Heirs of one of them, it often has been a Queſtion; if he that hath the Fee, may deviſe it, and there are Opinions both ways. *Windham*, in ſuch Caſe he cannot Deviſe, *Raymond's Rep. f.* 40. *Weeden* v. *Baldwin.*

Q. 22. I give all to my Mother, All to my Mother, *whether Lands can paſs by theſe words?*

S. Upon a ſpecial Verdict found, *&c. viz. I give all to my Mother, All to my Mother*; And reſolved, that Lands do not paſs by theſe words, by the whole Court, *Raymond's Rep. f.* 97. *Bowman* v. *Milbank.*

23. T.

23. T. *and two others were Tenants in Common of a Manor*; T. *makes his Will in Writing of his Third Part, and then by Indenture and Fine, Partition is made between theſe Tenants in Common*; *whether this Partition be a Revocation of the Will?* Q.

Temple and two others were Tenants in Common of the Manor of *Burton Baſſet* in the County of *Warwick* in Fee; *Temple* makes his Will in Writing, of his Third Part; and by Indenture and a Fine, Partition is made, betwixt the Tenants in Common; And if this Partition be a Revocation of the Will was the Queſtion; and it ſeemed to all the Barons of the Exchequer, That it is not any Revocation, *Raymond's Rep.* 240. *Riſley* v. *Dame Baltinglaſs.* S.

24. *A Curate uncapable of taking an Eſtate in Succeſſion, for want of being incorporate, whether the Heir of the Deviſee ſhall hold the Eſtate in Truſt for the Curate for the time being?* Q.

An Impropriator deviſed to one, that ſerved the Cure, and to all, that ſhould ſerve the Cure, after him, all the Tithes and other profits, *&c.* though the Curate was incapable to take by this Deviſe in ſuch manner, for want of being Incorporate and having Succeſſion; yet my Lord Chancellor *Finch* Decreed, that the Heir of the Deviſee, ſhould be ſeiſed in Truſt for the Curate for the time being, *Ventris* 2 *pt.* 349. *Anonymus.* S.

25. *Lands were Deviſed to two Daughters, equally to be divided, and to the Survivor of them, and to the Heirs of the Body of the Sur-* Q.

Survivor of them, whether this be an Eſtate of Jointenancy, or Tenancy in Common?

S. *Roll* Chief Juſtice ſaid, that the words *Equally to be divided* in a Will do make a Tenancy in Common by Conſtruction, but in a Grant it would be otherwiſe; but here upon the entire Will, it does not appear, that the Lands ſhould be divided, but that there ſhould be a Survivor; and that the Land was intended for a Security for a Portion, and that the deviſe ſhould ſtand, till the Monies ſhould be paid, and in a Will the laſt words of it do Explain the firſt words; but it is not ſo in a Grant; and all the Juſtices agreed with the Chief Juſtice, *Stiles's Rep. f.* 211. *Hard* v. *Lenthall.*

Q. 26. *A man Deviſeth by his Teſtament to his Daughter* Jane Totam terram ſuam *in* Dale, Habendum ſibi & hæredibus de Corpore ſuo Legitime procreatis; *And by the ſame Will he deviſes to* Ann *his Daughter,* Totam terram ſuam in tenura I. S. *in the County of* Hartford, *where in* Truth Dale *was in the County of* Hartford *and parcel of theſe Lands were in the Tenure of* I. S. *whether* Jane *ſhall have the Lands in Dale, in the Tenure of* I. S. *by the firſt words, or ſhall have them by the laſt words?*

S. *Harris*; the Teſtator had given it by the firſt Words, to *Jane*, by which he cannot revoke his Gift, and give afterwards to another Daughter; but all the Juſtices were of

Q. the contrary Opinion, *Daliſon's Rep. f.* 3. *pl.* 1.

27. *A man deviſeth to his two Sons paying his Debts, what Eſtate ſhall they have?*

At

At this day, if a man Deviſes his Lands to his two Sons, (and nameth them by their Names,) paying his Debts, they have no other but an Eſtate for Life; for when a Will is made, and it is Doubtful how it ſhall be taken, it ſhall be more beneficial for the Heir, to ſave his Inheritance; by *Hales* at *Sergeants-Inn*; and he ſaid, that it was ſo adjudged, when he was at the Bar, *Daliſon's Rep. f.* 13. *pl.* 22. S.

28. *A man ſeiſed of Lands, makes a Deviſe of them by his Teſtament to his Wife, to diſpoſe and employ them, upon her ſelf, and her Sons at her Will and Pleaſure, what Eſtate has the Wife, or whether a Fee thereby?* Q.

It was held by *Dyer*, *Weſton* and *Walſh*, that ſhe had a Fee thereby; as if he had Deviſed the Lands to her forever, for the Conſtruction of the Law, ſupplieth the defect of the Deviſor's Words, according to his Meaning; and it was alſo held by *Dyer* and *Walch*, that the Eſtate in it ſelf is a Condition, for thoſe words of Intention, are a Condition in any Deviſe, but not in a Grant or Feoffment, unleſs it be in the Caſe of the King, and the words amounting to ſo much, ſo that ſhe does not give the Lands over to a Stranger, but ſhe muſt give it over to one of her Sons, *Daliſon's Rep. f.* 58. *pl.* 5. 30. *Vide my firſt part Queſtion. p.* 209. S.

29. *A man Deviſeth his Lands to his Wife,* De anno in annum, *until* John *his Son ſhall come to the Age of* 20 *years, and dies, the Wife enters;* John *the Son dies before he comes to the Age of* 20 *years, whether the Intereſt of the Wife* Q.

Wife be determined by the death of the Son, before the 20 years?

S. It was held by all the Juſtices, that by the death of the Son the Eſtate of the Wife was ended; for it is intended, that the Will of the Deviſor was, that ſhe ſhould have his Lands, during the Minority of his Son, becauſe he could not duly order his Lands, being within Age, and by his death the reaſon of his Wife's Management ceaſeth; and *Dyer* ſaid, that by thoſe words *De anno in annum*, it's intended, that the Will of the Deviſor was, that the intereſt of the Wife was determined by the death of his Son; but if the Words had been until the Son ſhall come, or may come to the Age of 20 years, then notwithſtanding his death, the Eſtate of the Wife continues, *Daliſon's Rep. f.* 58. *pl.* 6.

Q. 30. *A man Deviſeth his Lands to his Eldeſt Son in Tail, and that the Executors ſhall take the Rents of the Lands to the intent to find him and his younger Brother at School, till they come to full Age, Whether the Executors had an Intereſt in the Lands till the full Age of the Deviſee?*

S. The Opinion of *Brown* and *Weſton* was, That the Executors had an Intereſt in the Lands, till the full Age of the Deviſee; as if he had Deviſed his profits of the Land to them, *Daliſon's Rep. f.* 46. *pl.* 2. *Vide a Reſolution to the ſame effect in Leonard* 2 *pt. n.* 280.

Q. 31. *The Father Seiſed of Lands, is bound in an Obligation, and Deviſeth his Land to his Wife, until his Son ſhould come to the Age of*

21

21 *years, the Remainder to the Son in Fee, and other Lands did deſcend to the Son from his Father, whether the Heir in this Caſe ſhall be at his Election to wave the Deviſe, and take by deſcent, or* e contra ?

It was the Opinion of *Gawdy* and *Fenner* Juſtices, That the Son ſhould be Judged in by Deſcent. *Clench* held the Contrary, *Leonard* 4 *pt. n.* 97. *Baſpole's Caſe.* S.

32. *A Deviſe of ſeveral Parcels of Land to ſeveral Perſons, and the Survivors to be each others Heir, what Eſtate paſſes?* Q.

John Hambleton had Iſſue Four Sons, *John* the Eldeſt, *Robert* the Second, *Richard* the Third, and *Thomas* the Fourth, and Deviſed to them a Parcel of Land, to them and their Heirs Males of their Bodies Begotten, and if it happen, that any of their Heirs die without Iſſue, Male of his Body Lawfully Begotten, then the Survivor to be each others Heir. If theſe words make a Remainder, or are void was the Queſtion. And it was adjudged againſt the Plaintiff, for the Court held, that all thoſe that Survived were Joyntenants, and one Joyntenant cannot have a Treſpaſs againſt the other; for by the intent of the Will, it appears that the Survivors ſhould have that part, and the Survivority of each other to be Heir, that is, all that Survive ſhall be each others Heir, and ſo the Remainder ſhould be to every one of them, *Owen's Rep. f.* 25. *Hambleton's Caſe.* S.

33. *A Man Seiſed of a Manor, Parcel in Demeſn, and Parcel in Service, Deviſeth by his Teſtament to his Wife, during her Life, the Demeſn Land, and alſo by the ſame Will Deviſes* Q.

viſes unto her all the Service of the Chief Rents for 15 years, and further by the Teſtament, he deviſeth the Manor to another after his Wife's Death, whether this Deviſe can take Effect for any part of the Manor as to the Stranger, until the Wifes deceaſe?

S. It was agreed by all the Juſtices, That the Deviſe takes no Effect for any part of the Manor, as to the Stranger, until after the death of the Wife; and that the Heir after 15 years ended, and during the Life of the Wife, ſhall have the Services, and chief Rents, *Daliſon's Rep. f.* 5. *pl.* 6.

Q. 34. *In a Replevin the Caſe was,* I. W. *being ſeiſed of Lands in Fee, by his will did Deviſe all his Lands, and Tenements to* A. W. *and his Heirs, and before his Death, made a Deed of Feoffment of the ſame Lands, and when he Sealed the Feoffment, he asked if this Feoffment will hurt this laſt Will, and if it will not, I will Seal it; and then Sealed, and made a Letter of Attorney to make Livery in any of the ſaid Lands; The Attorney made Livery, but not of the Lands, which were in Queſtion; and then the Teſtator died; and the Queſtian was, whether the Deviſee, or the Heir of the Deviſor ſhould have the Land?*

S. It was ſaid in behalf of the Heir, That if the Teſtator had ſaid, *It ſhall not be my Will, then it is a Revocation; Quod Curia Conceſſit.* But it was the Opinion of the Court, That it appears, that it was the intent of the Teſtator, that his Will ſhould ſtand; and if it be not a Feoffment, it is not a Revocation in Law, although that the Attorney

ney made a Livery in part, ſo that the Feoffment was perfect in part; yet as concerning the Land in Queſtion, whereof no Livery was made, this Will is good, and the Jury found accordingly, that the Lands do not deſcend to the Heir, *Owen's Rep. f.* 80. *Gibſon* v. *Muteſſe.*

35. *A man deviſed his Land to his Wife, for Fear and becauſe he was in Doubt, whether he ſhould have Iſſue, or no; he further Willed, by his Will, that if he ſhould not have any Iſſue by his Wife, that then after the death of his Wife, the Land ſhould be ſold, and the Mony thereof Coming, diſtributed to three of his Blood, and made his Wife and another his Executors; the Executors after his death, proved the Will; the other Executor died, and the Wife Sold the Lands, whether the Sale be good or not?* Q.

It was the Opinion of *Wray* and *Southcoat*, That the Sale was good, although it be not expreſſed in the Will, by whom the Land ſhould be Sold; for the Monies coming of the Sale, are to be diſtributed by his Executors, to perſons certain as Legacies, and it appertains to Executors, to pay the Legacies, and therefore they ſhall Sell, *&c.* As if a Man Willeth, that his Lands be Sold, and that the Monies coming thereof, ſhall be diſpoſed of, for the payment of his Debts, now the Executors ſhall Sell the Lands, for to them it belongs to pay Debts. Alſo they held, that the Lands ſhould be Sold in the Lifetime of the Wife, otherwiſe it could never be Sold; and alſo that the Surviving Executor ſhall Sell the Land, becauſe the S.

Authority doth Survive, *Leonard* 2 *part n.* 276.

Q. 36. *Whether General words compriſed in a Will, can inlarge Special Words before in it?*

S. A Man Seiſed of Copyhold Lands, Deviſed a certain parcel of them to his Wife for Life, the Remainder to his Brother, and his Heirs, and afterwards in the preſence of three perſons of the Court, ſaid to them, *I have made my Will, and I have appointed all things in my Will, as I will have it*; And afterwards he ſaid, *And here I Surrender all my Copihold Lands into your hands accordingly.* It was moved, if all his Copyhold Lands ſhould be to his Wife, or to thoſe which were Specified in his will; And the Opinion of the whole Court was, That the Surrender is reſtrained by the Will, ſo as no more paſſes to the Wife upon the whole matter, but that which is mentioned in the Will, and the General words ſhall not inlarge the matter, *Leonard* 3 *pt. n.* 43.

Q. 37. *A Deviſe of all my Lands in* A. *whether it paſs Lands afterwards purchaſed there, If I declare it to a Stranger, that they ſhall go as the reſt?*

S. *Ejectione firmæ*, upon a ſpecial verdict the Caſe was; that one *Richard Parſons* was Seiſed of divers Lands in *Aldworth*, and had Iſſue Four Daughters, *viz. Barbary*, *Joan*, *Frances* and *Mary*, made his Will in writing, and thereby Deviſed all his Land in *A.* to *Barbary* and *Joan* his Daughters, and made them his Executrices, and afterward purchaſed other Lands in *A.* (which are the Lands

Lands in Queſtion) and after one *I. S.* came to the Deviſor, and Deſired, that he would Sell unto him thoſe Lands, which he lately purchaſed. And he ſaid, *No, they ſhall go with my other Lands in* A. *to my Executrices.* Afterwards he being Sick, the VVill was Read unto him, and he ſaid nothing thereto; but then gave divers Legacies of Goods to others, and cauſed them to be written and annexed in a Codicil thereto, and died, whether thoſe Lands newly Purchaſed ſhall paſs to the Executrices, by that Will was the Queſtion, *viz.* whether by thoſe words uſed to a Stranger, or the annexing the Codicil to the Will, being only concerning Goods, be as a new Publication of his Will, to make thoſe Lands to paſs; All the Juſtices (*Gawdy abſente*) held, That it is a new Publication of his Will, and ſufficient by the words to *I. S.* for that ſhews his intent ſufficiently, and the VVill writ hath words ſufficient. And *Fenner* held, that the Annexing of the Codicil thereto, is a new Publication as to it: For therein he affirmed, that it ſhould be his VVill at that time. But the other Juſtices doubted thereof, becauſe he doth not ſhew thereby any intent, that this VVill ſhould be for his purchaſed Land, nor, that he then remembred them. But for the Reaſons before; it was adjudged for the Plaintiff, That thoſe Lands well paſſed by the VVill, *Cro. Eliz. f.* 493. *Becford* v. *Parnecot.*

38. *A Deviſe of Lands in Poſſeſſion and in Reverſion upon a Life, to three Executors to* Q.

Sell, to pay Debts: One Executor Dies, Tenant for Life dies, Sale by the Survivors, whether good or not?

S. A Man Seised of Lands in Possession, and of other Lands in Reversion, upon an Estate for Life deviseth by his will in writing, that his Executors should have all his Lands Free and Customary in *D.* for ten years to perform his VVill, and the VVill of his Father, with the Profits thereof, and that, after the Ten years, his Executors, or any of them, should Sell it for the Payment of his Debts; he makes three Executors and dies: The one dies; the ten years expire; the Tenant for Life dies; the two Surviving Executors Sell the Land, *&c. Spurling*; This Sale is not good. First, the Reversion of the Estate for Life passed not, because he had other Lands there, to satisfy the words, and it was not his intent to pass it, because there were not any profits to be taken thereby. Secondly, the Sale by two Executors is not good, for it ought to have been by all, or by the one of them only. But the Court resolved to the contrary in both; wherefore it was adjudged accordingly, *Cro. Eliz. f.* 524, 525. *Townesend* v. *Wale.*

Q. 39. *A Devise of Lands in* A. (*the same bring in* A. *and* B.) *to his yongest Son in Fee, and if he dye without Issue, his Wife to have the Lands; whether she shall have only the Lands in* A?

S. One *Bishop* being Seised of divers Lands, called *Hays-Lands*, which extended into two Vills, *Cokefield* and *Cranfield*, Devised all his Lands

Lands in *Cokefield*, called *Heyes-Lands* to *I.* his youngeſt Son, and his Heirs, and after in another part of his VVill, he VVilleth, that if *I.* his Son died without Iſſue, that his VVife ſhould have *Hays-Land*, and dies, *I.* dies without Iſſue; and whether the Feme ſhall have *Hayes-Land* in *Cranfield*, or only that in *Cokefield*? was the Queſtion. And it was Reſolved by the whole Court, that ſhe ſhould have that only, which is in *Cokefield*, becauſe there was no more deviſed to the youngeſt Son. But *Popham* ſaid, if the Deviſe had been to the Eldeſt Son, and that if he died without Iſſue, that his Wife ſhould have *Hayes-Land*; there Peradventure ſhe ſhould have all; becauſe the Eldeſt Son had all; the one part by deviſe, the other part by deſcent. And ſhe ſhould have all, which he had; wherefore it was adjudged accordingly, *Cro. Eliz. f.* 674. *Woodden* v. *Oſborn.*

40. *A Deviſe of a Houſe with the Appurtenances, the Houſe being Copihold, the Lands Freehold, whether the Land tho' uſed with the Houſe, ſhall paſs?* Q.

Ejectione firmæ. For certain Land in *Aſton Clinton* in the County of *Bucks.* Upon Evidence to a Jury, a Deviſe was ſhewn of an Houſe with the Appurtenances; and thereby Land in the Field was claimed: And *Popham* doubted, whether it ſhould paſs: But *Fenner* ſaid, that it well might paſs: And upon Demurrer in 28 *Eliz.* it was adjudged accordingly. The Defendant then to make it clearer ſhewed, that the Houſe was S.

Copihold, and the Land Freehold; and the whole Court thereupon Conceived, that it could not be ſaid appurtenant altho' it had been uſed with it; wherefore the Plaintiff was Non-ſuited, *Cro. Eliz. f.* 704. *Yates* v. *Clinchard.*

Q. 41. *A Deviſe to one, and to the Heirs Females of his Body begotten, the Deviſee hath a Son and Daughter, and dies, whether the Daughter ſhall enjoy the Land?*

S. A man Seiſed of Lands in Fee, by his laſt Will and Teſtament Deviſeth thoſe Lands to *I. N.* and to the Heirs Females of his Body Lawfully begotten and dies; after the Deviſee hath Iſſue a Son and a Daughter, and dieth, here the Daughter ſhall have the Lands, and not the Son, and yet he is the moſt worthy perſon and Heir to his Father; but becauſe the Will of the Dead is, that the Daughter ſhall have the Lands, Law and Conſcience will ſo alſo. *Nihil eſt*, (ſaith the Emperor *Conſtantine*) *quod magis hominibus debetur, quam ut Supremæ voluntatis, (poſtquam aliud velle non poſſunt,) liber ſit Stilus, & licitum, quod iterum non redit, Arbitrium*, C. 1. 2. 1. and herein the very Heathens were preciſe, as appeareth by thoſe Verſes of *Octavius Auguſtus*, which *Donatus* reporteth, he made after that *Virgil* at his Death gave Commandment, that his Books ſhould be burnt, becauſe they were imperfect, and yet ſome perſwaded, that they ſhould be Saved, as indeed they happily were, to whom he anſwered thus;

Sed

—Sed Servanda fides, Suprema voluntas,
Quod mandat, fierique jubet, parere neceſſe eſt.

Engliſhed thus,

But Faith and Law muſt needs be kept
And what laſt Will doth ſay:
And what it doth Command be done,
That needs we muſt obey.

FINIS.

Syllabus Erotematum:

OR,

An INDEX of the *Queſtions*

Relating;

Firſt, *To Feoffments.*

(1.) WHether the word [*Dedi*] in a Feoffment can amount to a VVaranty? 11

(2.) VVhether Charters do paſs by a Feoffment made of the Land? *ibid.*

(3.) In what Caſe a Condition upon a Feoffment, can be performed to an Aſſignee, and not the Heir? *ibid.*

(4.) A Feoffment is made to ſuch a one as *I. D.* ſhall name, within ſuch a time, and *I. S.* is named by *I. D.* whether before the Feoffment and within the time *I. D.* can recall his Nomination, and naming again? 12

(5.) VVhether a Feoffment of Lands without Livery, and within the view, and lying in another County, be good, or not? *ibid.*

(6.) VVhether Livery to one Feoffee, ſhall ſerve for all upon a Feoffment of Lands? 13

(7.) A man Leaſeth lands for term of years, and after thereof makes a Feoffment to *I. N.* and ſends *W. P.* to make Livery of Seiſin who comes upon the Lands, and continues there all Night: But the VVife of the Leſſee for years, is not Outed, nor the Leſſee ever paid Rent to the Feoffee, but to

to the Feoffor all his Life, whether this be ſuch a Feoffment as ſhall paſs Lands to the Feoffee? 13

(8.) Whether a Letter of Atturney to make Livery of Seiſin, after his Death can be good? 14

(9.) *A.* Seiſed of two Acres, one in Fee and the other for Life, infeoffs *I. S.* of both Acres, and Livery is executed in the Fee Simple Acre in the name of both, whether this be a good Livery of Seiſin, or not? *ibid.*

(10.) Whether there can be a good Feoffment, without any Livery, or Entry? 15

(11.) Livery of Seiſin of one Acre in uſe, in the name of other Acres, whether good? *ibid.*

(12.) Whether a Letter of Attorney for the delivery of Seiſin, without a Deed of Feoffment, can be good in Law? 16

(13.) *A.* Copiholder in Tail, according to the Cuſtom, accepts of a Feoffment whether this ſhall work any deſtruction of the Copyhold in Tail? *ibid.*

(14.) If a Letter of Attorney be made to enter into all, or any part of the Lands, in the name of the whole, and to make Livery of Seiſin, whether this Attorney may enter into any part, though in the Poſſeſſion of ſeveral Tenants, and make the Livery ſeverally? *ibid.*

(15.) Whether by Livery of Seiſin made of one Houſe, other Houſes ſhall paſs? 17

16. Leſſee for Life, the Remainder in Fee to *I. S.* who makes a Feoffment, and a Letter of Attorney to deliver Seiſin, which is executed accordingly, whether this Remainder paſſes thereby? *ibid.*

(17.) Livery of Seiſin made before Enrolment, whether it ſhall veſt the Eſtate by the Livery and prevent the Enrolment? 18

(18.) A man makes a Feoffment to the uſe of his Laſt Will, Whether any thing paſſes by the Will, or by the Feoffment? *ibid.*

(19.) One was produced as a Witneſs to prove Livery of Seiſin, upon a Feoffment

ment, and having an Eſtate at Will, in part of the Land, whether he be a good Witneſs, or not, to prove the Livery and Seiſin? 18

(20.) A man ſeiſed of Lands in Fee, makes a Leaſe for years, and after infeoffs *B.* with a Letter of Attorney to the Leſſee, to *C.* and to *D. Conjunctim & Diviſim*, &c. to make Livery of Seiſin, the Leſſee makes Livery in one part of the Land, and *C.* in another part, whether theſe ſeveral Leveries were good? 19

(21.) A Feoffment is made of a Houſe and the Deed thereof delivered in the Houſe, without other Circumſtance, whether this can amount to a Livery of Seiſin? 20

(22.) A Feme Covert makes a Charter of Feoffment and becoming Sole, or diſcovert, makes Livery of Seiſin *Secundum formam Chartæ*, whether this Livery be void, or not? *ibid.*

(23.) A Feoffment in Fee, *ea Intentione*, that the Wife of the Feoffor ſhould have the Land for Life, the Remainder to his younger Son in Fee; whether it be a Condition, or an Eſtate executed? 21

(24.) A Leaſe is made to *B.* for years, the Remainder to the Heirs of *B.* and Livery is made, whether this be a good Remainder? 22

(25.) A man has two Leſſees for years, by ſeveral Leaſes of Land in one County, and makes a Feoffment of all his Land within the ſame County, and makes Livery upon the Land of one of the Leſſees, outing him, in the name of all, whether any thing of the other Leaſe, ſhall paſs? *ibid.*

(26.) A man Seiſed of a Houſe, and of a Cloſe, adjoyning to the Houſe, makes a Leaſe of the Houſe for Term of years, or Life; and then makes a Feoffment of the Houſe (the Termor, being at Market, and his Wife and Children remaining in the Houſe) in the name of all, whether the Houſe paſſes, or not? *ibid.*

(27.) A Bargain and Sale, and thereupon Livery of Seiſin, whether a perfect Feoffment? 23

(28.) A Feoffment made to the Son and Heir apparent, but no uſe expreſſed, nor conſideration, whether it ſhall be to the uſe of the Son? *ibid.*

(29.) A man makes a Feoffment to two perſons upon Condition, that the Feoffees, before ſuch a day ſhall make again an Eſtate to the Feoffor for term of his Life, the Remainder over in Fee to a Stranger, one of the Feoffees makes the Eſtate accordingly, whether it be good for the Moyety ſeeing the Condition is entire? 24

(30.) If Land be to paſs in poſſeſſion, by an Eſtate executed what things be requiſite? *ibid.*

(31.) Whether there be any difference, betwixt a Feoffment in Fee to uſes, and a Covenant to ſtand ſeiſed to uſes? 25

(32.) Tenant for Life enfeoffs *J. S.* of *White Acre*, of which he was ſeized for Life, with a Letter of Attorney to give Livery of Seiſin, but before the Execution thereof, the Tenant for Life purchaſeth the Fee, and Livery is made, whether all paſſes? 25

(33.) In what Caſes Livery of Seiſin ſhall be effectual, and what not? 26

(34.) Tenant for Life, the Remainder to his eldeſt Son, and his Heirs, join in a Leaſe, reſerving Rent to Tenant for Life, and his Heirs, whether this Rent be determined by his death, or not? 26

(35.) Lord and Tenant, holds by three pence, three Acres of Land, the Tenant infeoffs the Lord in Fee of one of thoſe Acres, whether the Seigniory be extinct for part, or in the whole? 27

(36.) If a Man be ſeiſed of an Acre of Land in Fee, and *J. S.* is ſeiſed to his uſe in Fee of another Acre, and he makes a Feoffment of both Acres, and Livery of the Acre, that he has in poſſeſſion, whether by this Livery, the Acre in uſe ſhall paſs? 27

(37.) A Reverſioner upon a Term for years, grants his

his Reverſion to his Leſſee, for years, by *Dedi Conceſſi & Feoffavi*, with a Letter of Attorney to execute Livery of Seiſin, whether the Grantee can take by the Livery, or not? 28

Secondly, *To Grants.*

(1.) IF there be two Executors, and one of them grants to another a Term of years, how much of it paſſes, whether all, or half the Term? 36

(2.) *A.* having granted to him the next Avoidance to a Church, does make two his Executors, by his Will, and dies, whether can the Executors gtant this Avoidance before a Probate of the VVill? *ibid.*

(3.) If one grants all his Mannor of *D.* in *N.* and all his Lands in *England* parcel of the Mannor, whether all the Lands ſhall paſs, which he has in *England*, parcel of the ſaid Mannor? 37

(4.) Lands are granted from the Crown to the honeſt Men of *Iſlington*, without ſaying, *Habendum* to them and their Heirs, or Succeſſors, rendring a certain Rent, whether this be a good Corporation perpetual? 37

(5.) Tenant in Tail of a Mannor, to which an Advowſon is appendant, grants the next Avoidance of the Advowſon and dies, and the Iſſue in Tail enters, whether the Grant of the next Avoidance be good? 38

(6.) A Grantee of a Mannor before Attornment grants the Advowſon appendant, and Attornment is made, whether this Grant be good or not? 38

(7.) A Grant, or any other Conveyance made to one by the name of a Knight, when he was not a Knight, whether this can make the Grant, or other kind of Conveyance, void? 38

(8.) A Man bargains, ſells and grants a Mannor with the Advowſon appendant, the Church becomes void, before Enrolment, whether he may preſent by the word *Grant* or not? 40

(9.) Liberty of a VVarren granted by the King to three Coparceners of three Mannors, in all the ſaid three Mannors; they make Partition,

Partition, and one of them grants her Mannor, whether the Grantee ſhall have this ſame liberty? 40

(10.) Leſſee for 10 years, grants a Rent Charge to the Leſſor for the ſame years, and the Leſſor grants the Remainder in Fee, to his Leſſee for years, whether by this the Rent be extinguiſhed? *ibid.*

(11.) Lands demiſed to Husband and VVife for their lives, the Remainder to the Survivor of them for years, the Husband grants over this Term for years, and dies, whether the Wife or the Grantee ſhall have this Term for years? 41

(12.) *A.* granted to *B.* a Rent-Charge out of his Lands to begin, when *J.S.* dies without Iſſue of his Body, which Iſſue dies without Iſſue, whether this Grant ſhall take Effect? 41.

(13.) Leſſee for years of the Pawnage of the Park of *H.* grants all his Goods, Moveables, and Immoveables within the ſaid Park, whether the Leaſe of the Pawnage paſſeth by the words aforeſaid? 42

(14.) A grant to *J. S.* and there be many of that Name, to whom this grant ſhall be intended? 42

(15.) The King grants Lands to *J. N.* & *Hæredibus maſculis*, whether this Grant be good? 42

(16.) Whether upon a falſe ſuggeſtion, or falſe conſideration, the grant of the King, ſhall be good? 43

(17.) A Parſon within Age of 21 years, grants a Leaſe of his Benefice, whether this ſhall bind him? 43

(18.) King *H.* 8. granted *Turbariam ſuam in Dale* to one *Farrington*, rendring Rent for 21 years, and then the Grantee, employed part of it in arable Land, and left part of it in *Turbary*, and then Queen *Mary* granted *Totam illam Turbariam* before demiſed to *F.* whether only that paſſed, which was *Turbary*? 44

(19.) What paſſes in a Grant, by the word Scite of a Mannor? *ibid.*

(20.) A man gives, or grants Lands to *J. S.* in the premiſſes, *Habendum* to him,

him, and three others for their Lives, *& eorum diutius viventium ſucceſſive*, the queſtion is, what Eſtate *J. S.* had, and whether there be any occupancy in the Caſe? 44

(21.) By the Grant of all Lands and Hereditaments in *Dale*, whether Copyhold Lands ſhall paſs? 44

(22.) A man grants his Land, *& totum Statum ſuum, habendum* for 60 years, whether the *Habendum* be repugnant to the premiſſes, and conſequently void? 45.

(23.) A Leaſe for life, granted to a Copyholder, without Deed, or Livery, whether it ſhall deſtroy the the Copyhold? 46

(24.) Two Jointenants hold of a Lord, and the Lord grants the Services of one of them, and the other at Torns, whether the Grant be good for one Moiety of the Services, or void in all? 46

(25.) Whether a Leaſe granted by a Jointenant to commence immediately, after his death, ſhall bind his Companion? 46

(26.) A Grant of a Leaſe for 99 years, if two perſons ſhall ſo long live, whether the Leaſe determines, upon the death of either of them? 47

(27.) A grant of an Annuity for 30 years, to commence after the death of the Grantee, whether it ſhall bind his Heir? 47

(28.) Three Coparceners being ſeiſed of a Mannor in Fee, to which a Leet is appendant, do grant to the King two parts of the ſame Mannor, with the appurtenances, whether the Leet by ſuch grant is extinct? 48

(30.) A man ſeiſed of a Mannor in Fee, makes a Leaſe for years of the Scite of the Demeſns of the ſaid Manor to another, and after the Leſſee grants the Reverſion of the Mannor to another in Fee by Deed, and the Tenant atturns to the Grant, whether by this Grant, and attornment the Reverſion paſſeth? 48

(31.) A Leaſe for years, provided, that the Leſſee, nor his Aſſigns ſhall grant his Term over, nor any parcel

parcel thereof, and then the Lessee dieth intestate, the Ordinary commits Administration, and after the Administrator, being in possession of the Term for years, grants parcell of it over to a Stranger, whether the Condition be broken? 49

(32.) A man grants his Mannor with the Appurtenances, what things shall pass therewith? 49

(33.) VVhether a Lease, or other Estate granted by a person outlaw'd, after the Outlawry, and before Inquisition taken, can prevent the King's Title? 50

(34.) If a Church be void, and the King grants the Mannor, with the Advowson appendant, whether the Advowson shall pass? *ibid.*

(35.) VVhether the Grant of an Avoidance by Letter be good or not? 51.

(36.) A man seised of Lands in Fee, grants a Lease for years, reserving Rent to him, and his Executors, and Assigns, and during the Term, the Lessor dies, and his Heir, who hath the Reversion brings an Action of Debt, whether it be well brought by the Heir? 51

(37.) A Lease of a Mannor is granted, *Habendum* with all the Members, what shall pass? 52

(38.) *M.* grants to *T.* 100 Acres of Land in such a Field, and 60 in such a Field, and 20 Acres of Meadow in such a Meadow in *W.* and *H.* in which the Acres are known by Estimation, or Limits; whether the Grantee shall take the Acres, as they are known or according to the measure by the Statute? *ibid.*

Thirdly, *To Fines.*

(1.) FEme Tenant in Tail, Remainder to her Sisters in Fee, Tenant in tail and her Husband levy a Fine to the use of them two, and the Heirs of the Body of the Wife, the Remainder to the Heirs of the Husband with warranty against them, and the Heirs of the Wife, the Feme dies without Issue, whether the Warranty be a Bar to the Sister? 65

(2.)

(2.) A Feoffment is made to *I. S.* and his Heirs, until ſuch Sums of Money be paid, and in Caſe of Non-payment, a Re-entry; the Money is not paid; *I. S.* Levies a Fine, and Five years paſs, the Feoffees enter not, whether the Fine be a Bar? *ibid.*

(3.) Whether the delivery of a Declaration in Ejectment upon the Lands, can be ſuch an Entry or Claim as to avoid a Fine? 66

(4.) Whether a Fine can be avoided for part, and can ſtand good for the Reſidue? *ibid.*

(5.) Licence to Levy a Fine of a Rectory, and it is Levied of a Meſſuage, whether this be good, upon Cogniſees the Averment, that the Houſe was parcel of the Rectory? *ibid.*

(6.) Where and how a Fine levied by a Feme Covert ſhall be ſet aſide, and where the Commiſſioner who took it may be Fined? 67

(7.) To what uſe a Fine ſhall be, where there are two or three Declarations of the uſes made? 68

(8.) A diſtreſs for the Arrears of a Rent Charge in Fee, after the Grantee had Charged his Eſtate by a Fine levied by himſelf whether good? 69

(9.) A Fine is levied by *B.* of the Manor of *Dale*, and *C.* has another Manor within the ſame County, upon a *Scire Facias* brought againſt *C.* to execute the Fine of his Manor, how muſt *C.* plead? *ibid.*

(10.) Baron and Feme in Tail, Remainder in Fee to the Right Heirs of the Baron, the Baron alone Levies a Fine, whether the Iſſue in Tail be bound by the Stat. of 32 *H.* 8. *c.* 36? 70

(11.) A Diſſeiſor of Lands in three Vills, Levies a Fine with Proclamations of the Lands in one of the Vills, to another in Fee, and within the Five years next enſuing, the Diſſeiſee enters into the Lands, in the other two Vills only, being in the poſſeſſion of the Diſſeiſor, in the name of all the ſaid Lands in three Vills, whether this Entry gains to him the Lands in the third Vill? 70

(12.) A Feme Sole Seised of Lands in Tail, takes Husband, and she and her Husband Levy a Fine thereof in Fee, and the Conusee renders the same Land again to the Baron and Feme in Tail special, the Remainder to the Right Heirs of the Wife in Fee, and they have Issue a Son, and Baron dies, and the Feme takes another Husband, and they Levy a Fine of the said Lands to a Stranger in Fee, whether the Son may enter for a Forfeiture by the Statute of 11 *H.* 7. *c.* 20? 71

(13.) Whether a Writ of Error, by the Husband and Wife, within Age, shall reverse a Fine Levied by them, against both? *ibid.*

(14.) Land was given to *A.* for Life, the Remainder to *B.* for Life, the Remainder to one *Braybrook* in Fee, *B.* in Possession Levied a Fine to a Stranger *Sur Conusance de droit come ceo*, &c. *A.* dyed, if now *Braybrook* might enter for the Forfeiture was the Question? 72

(15.) Tenant for Life of Land, Leased parcel thereof to hold at Will, and being in Possession of the Residue, Levied a Fine of the whole, the Lessor entered into the Land, which was let at Will, in point of Forfeiture, in the name of the whole, whether this be a good Entry for the whole? 72

(16.) A Fine Levied by a Disseisor, and a Stranger within five years, after Proclamations, enters into the Right of the Disseisee, without the Privity of the Disseisee, whether this shall avoid the Bar of the Fine Levied by the Disseisor? 73

(17.) A Father Covenanted with one *A.* that in consideration of a Marriage to be had between the Son of the Covenantor, and the Daughter of *A.* that he before such a day, would Levy a Fine, which should be to the uses of the said Son and Daughter in Tail for a Joynture; the Fine is Levied accordingly to the uses aforesaid; the Father dies, but in the Fine no Mention is made of any Marriage had; whether the Estate Tail, be well enough

Exe.

Executed in the Son and Daughter? 74

(18.) Whether a Fine may be Reverſed as to one, and ſtand good againſt another? *ibid.*

(19.) Tenant in Tail, Remainder in Tail; Tenant in Tail in poſſeſſion, makes a Leaſe for three Lives, according to the Statute of 32 *H.* 8. and afterward dieth without Iſſue, he in the Remainder before Entry, Levies a Fine, whether the Fine be good? *ibid.*

(20.) Husband and Wife Seiſed of Lands in the right of his Wife, the Husband alone makes a Leaſe by Paroll, for years; afterwards the Husband and Wife Levy a Fine, and then the Huſband and VVife both die, whether this Leaſe can be avoided by the Conuſee? 75

(21.) A man by Deed, during the Coverture, makes a Joynture to his VVife, afterwards the Husband and VVife Joyn in a Fine of his Land, the Husband dies, whether the VVife ſhall have Dower, or not? *ibid.*

(22.) Tenant for Life, Bargained and Sold his Lands to *A.* and his Heirs and afterwards Levied a Fine to the Bargainee, *Sur Conuſance de droit come Ceo*, &c. whether this be a Forfeitture committed by the Bargainee? *ibid.*

(23.) A Remainder is limited in Tail to *I. S.* and the Heirs of his Body, to begin after the Death of Tenant for Life, whether a Fine levied by him in Remainder, with Proclamations in the Lifetime of Tenant for Life, can Bar the Iſſue in Tail? 76

(24.) Error being brought for the Reverſal of a Fine, for want of Proclamations, whether if the Proclamations be reverſed, the Fine ſhal remain a good Fine at the Common Law? *ibid.*

(25.) VVhether the non-payment of a Poſt-Fine be a Breach of a Covenant for diſcharging Incumbrances? *ibid.*

(26.) If a Bargainee Levy a Fine, and within Six

Months, the Deed is inrolled, whether the Land ſhall paſs by the Fine? 77

(27.) A man Deviſed Socage Lands to his Brothers Son in Tail, to have the ſame at his Age of 25 years, and died, having a Daughter, the Nephew after 11 years entered, and Levied a Fine, and attained to the Age of 25 years whether the Iſſue of the Deviſee was barred by the Fine? *ibid.*

(28.) VVhere, and in what Caſe is it, that a Fine ſhall be a Bar to a woman in Dower, ſhe having not purſued her Claim within five years? 78

(29.) Husband, and VVife are Donees in ſpecial Tail, the Husband alone levies a Fine of the Land, whether the Iſſue ſhall be barred? *ibid.*

(30.) Tenant in Tail, remainder to the King, levied a Fine, had iſſue and dies, whether the iſſue in Tail was barred? 79

(31.) An Infant bargaineth, and ſelleth his Land to another by deed indented for a certain ſum of Money, and after within Age, levies a Fine to the Bargainee, *Come ceo, que il ad de ſon done*, whether he ſhall avoid the Indenture for Non-age, until he has reverſed the Fine? 79.

(32.) VVhether the Record of a Fine, remaining with the *Cuſtos Brevium*, ſhall be amended, and made according to the Record, made and remaining with the *Chirographer*? 79.

Fourthly, *To Common Recoveries.*

(1.) A Man recovers in a VVrit of Entry, in the Poſt, againſt Tenant in Tail, upon voucher, and recovery, in value againſt *W.* the common vouchee and before Execution ſued, the Tenant in Tail dies, and his iſſue enters, whether the Recoveror may enter upon the iſſue in Tail, or not? 87

(2.) VVhether a common Recovery againſt an Infant, be as a common aſſurance, not to hurt him? *ibid.*

(3.)

(3.) *A.* being ſeiſed of the Mannor of *S.* in *O.* and of divers Lands in *O.* ſuffered a common Recovery of the whole, and by Indenture, expreſſed the uſes in this manner, *viz.* Of all his Lands, and Tenements in *O.* to the uſe of his wife for Life, the mainder over, *&c.* And of the Mannor of *S.* to uſe of his youngeſt Son in Tail, whether the wife ſhall have any thing in the Mannor of *S.* in *O*? 87

(4.) A man made a Feoffment in Fee, to the uſe of himſelf for life, and then to the uſe of his eldeſt Son in Tail, and afterwards to the uſe of his right Heirs, not having at the time of the Feoffment any Son; afterward he ſuffered a common Recovery, had iſſue a Son, who died in the life of his Father, having iſſue a Son, and then he himſelf died; whether the Son, and the Heir of the Son can avoid this Recovery by the Statute of 3 *H.* 8? 88.

(5.) A Reverſioner ſuffereth a common Recovery to uſes, whether his Heir can plead, that the Father had not any thing at the time of the Recovery? 89.

(6) Whether there be a diverſity between a Recovery to the uſe of Covenants, and Agreements in Indentures, and a Recovery to any uſe in the Indentures, and what it is? *ibid.*

(7.) Tenant for life, remainder over in Tail; Tenant for life is impleaded, and vouches him in Remainder, who vouches over one, that has the Title of *Formedon*, and ſo the Recovery paſſes by voucher whether the iſſue of him, that hath the Title of *Formedon*, can bring his *Formedon*, and recover againſt the Tenant for life? 90.

(8.) If a common Recovery be to paſs at the Bar, and the Tenant is ready at the Bar, and voucheth to warranty, *A.* for whom he is ready at the Bar to appear for the vouchee by his Warrant of Attorney, whether in this Caſe the vouchee can appear by Attorney? *ibid.*

(9.) *A.* Tenant for life, the Remainder to the uſe of

of *B.* in Tail, the Remainder to *C.* in Tail, the Remainder to the right Heirs of *D.* provided that, *A.* ſhall have power to make Leaſes for years, to commence after the death of *B.* without iſſue, whether *B.* can bar this Leaſe by a Common Recovery? 91

(10.) Indentures guiding the uſes of a Recovery, of which the ſeals were broken off by an Accident, whether allowable for good? *ibid.*

(11.) One makes a gift in Tail, and reſerves a Rent to him, and his Heirs, the Tenant in Tail makes two to be Tenants of the Freehold of the Land ſo given, againſt whom a Præcipe was brought; they vouch the Tenant in Tail, who vouch-eth over the common voucher, and ſo a Recovery is paſſed, after which he who has intereſt in the Reverſion, and Rent, before the Recovery had, diſtreins, upon which a Replevin is brought; whether the Rent continues after the Recovery? 91

(12.) What ſhall be good to ſtop a Common Recovery? 92

(13.) In what Caſe a Common Recovery may be aided by the Court of Common Pleas, upon a Writ of Error brought? *ibid.*

(14.) Tenant in Tail diſcontinues, and takes back another Eſtate and ſuffers a Recovery upon voucher, and recovers over in value, and dies, whether this Recovery, can bar the iſſue in Tail? 93

Fifthly, *To Exchanges.*

(1.) AN Exchange is taken betwixt two Perſons, of two Acres of Land by Deed, and in the *Habendum*, a recital mentioned, that every one ſhall have the Acre put in Exchange, with other Acres, to have in *excambium prædict.* which were not in the premiſſes of the Deed, whether theſe words will nullify, or make void the exchange according to the premiſſes? 100

(2.) An

(2.) An Exchange is made by Parol, between two Men in Fee of two Acres of Land, both which are lying in one County, and before their Entry by force of the Exchange, Indentures are made between them of the same Acres in Fee, without any mention of the word *Exchange* in the Indentures, and no Livery of Seisin is made of the Land, but either delivereth to other the Indentures as his Deed, and either entreth into the others Land, contained in the Indentures; the Question is, what Estate these two persons have in each others Land? 100

(3.) *J. N.* being seised of Land to which *J. S.* hath Right of Action, gives unto *J. S.* Tenements in Exchange for a Release of his Right; whether this be a good Exchange or not? 101

(4.) *A.* disseises *B.* of his Land, *B.* the Disseisee releaseth his Right to *A.* the Disseisor in exchange for another piece of Land, whether a good Exchange? 102

(5.) Disseisor and Disseisee are of one Acre of Land, and the Disseisor exchangeth this same Acre of Land, whether this be a good Exchange? *ibid.*

(6.) If two Men exchange Land by Deed, or without Deed, and neither enter, whether they can make a Revocation of this Exchange by Parol? *ibid.*

(7.) Two Men make exchanging of two Acres executed in Fee; one of them dieth, his Son taketh Wife, and entreth, and th'other party being impleaded voucheth the Son, which entreth into the warranty, so that the Tenant recovereth in value the Acre, which he delivered in exchange, whether the Son's Wife shall be endowed of this Acre? 103

(8.) *J. S.* and *J. N.* are enfeoffed of one Acre of Land, to have and to hold the same to them and to the Heirs of *J. N.* and *J. D.* gives to them another Acre of Land in Fee in exchange for the same Acre, of which they are enfeoffed as aforesaid, whether this

be a good Exchange in Law, or not? 104

(9.) An Exchange is made in Fee of Lands in one County betwixt two Men by Parol, before an Entry as to the point of Exchange either of the Parties deliver Seisin of the Land to the other, whether it shall take effect according to the delivery, or as an Exchange? 105

(10.) Speech is had betwixt *J. N.* and *J. S.* for the making an Exchange of Lands, and to that end either of them levy a Fine to the other of this Land, without any mention of Exchange in the Fine, whether it shall take any effect as an Exchange? *ibid.*

(11.) Lord and Tenant by Fealry and 12 *d.* Rent, the Lord doth exchange his Seigniory with the Tenant for the Tenancy, *& e converso*, by Deed indented, whether such an Exchange be good, or not? 106

(12.) Three Acres of Land to which an Advowson is appendant are given in Exchage by *J. N.* to *J. S.* for a Chamber assigned by the said *J. S.* at the Election of *J. N.* and *J. S.* assigns to *J. N.* two Chambers, *viz.* an upper and a lower, and *J. N.* chooses to have the upper Chamber and enters thereinto, and *J. S.* enters into the Land; whether this Exchange, which is uncertain in the beginning, be good in Law? 107

Sixthly, *To Releases.*

(1.) A Man made a Lease for years, rendring Rent, and upon payment of the Rent, the Lessor made an Acquittance by a Release of all Actions, Duties and Demands from the beginning of the world to the day of the date, whether the Rent to come were released by it? 115

(2.) A Lease is made for Term of years, the Remainder for life, the Remainder over to another for Term of life, and he in Reversion by his Deed doth releaseth to them three and their Heirs, whether the first Lessee shall have the sole possession

poſſeſſion of the Lands, as he had before? *ibid.*

(3.) A joint Eſtate is made to Baron and Feme, and to a third perſon in Fee, which third perſon releaſeth all his Right that he hath to the Baron, whether the Baron only ſhall have the Moiety that the third perſon had? *ibid.*

(4.) A Parſon makes a Releaſe of all Demands, whether Tithes are thereby releaſed? 116

(5.) A Releaſe by the Feoffees of *Ceſtuy que uſe* to his Leſſee for years, how it ſhall enure? *ibid.*

(6.) Land is given to *A.* and *B.* for the life of *C.* the Remainder to the right Heirs of *A.* or *B.* who ſhall ſurvive; whether the Releaſe of *A.* to *B.* ſhall deſtroy the Remainder? *ibid.*

(7.) The Grantee of a Rent charge for life, acknowleth a Statute and afterwards, he releaſeth to the Ter-Tenant, whether the Rent upon this Releaſe ſhall be put in Execution upon the Statute? 117

(8.) Mortgagor articles with a Stranger for the Sale of the Lands mortgaged, and receives 50 *l.* of the Mony, then pending a Bill againſt himſelf, and the Mortgagee for a diſcovery and performance, *&c.* the Mortgagor releaſeth to the Mortgagee all his Right and Equity of Redemption, whether this Releaſe be good or not? *ibid.*

(9) A Releaſe that goeth by way of Extinguiſhment, being made for an Hour, whether good for ever? *ibid.*

(10.) Whether a Releaſe of the Leſſor after the Aſſignment of the Reverſion, be a Bar to the Aſſignee in a Covenant for Rent againſt the Leſſee? 118

(11.) Two Joyntenants and one for Money, Grants, Bargains and Sells, and confirms to the other, whether this ſhall amount to a Releaſe? *ibid.*

(12.) Land is given to two upon Condition, that they ſhall not alien, and one of them makes a Releaſe to the other, whether this be a Breach of the Condition? 119

(13.) The

(13.) Two Jointenants make a Feoffment in Fee, upon Condition, that if they pay 20 *l.* before the Feaſt of Penticoſt, that then they may Re-enter; before the day one of them releaſes to the Feoffee upon Condition, all his Right, Title and Demand; the other Joyntenant pays the Sum at the day, and the Feoffee receives it, whether by this Releaſe the Condition be deſtroyed? *ibid.*

(14.) A Leaſe was made for years, and after the Leſſor Deviſes the Reverſion for Life, the Remainder to another in Fee, in Waſt brought by him in the Remainder in Fee againſt the Leſſee; he counts that he in Reverſion for Life had Releaſed to him all his Right, whether this be a good Releaſe? *ibid.*

(15.) *I. N.* Releaſes all his Right, that he hath to all the Lands, which *I. S.* has by deſcent, and he has none by deſcent, whether this Releaſe be void, or not? 120

(16.) Whether there be any Diverſity in Law, where the Diſſeiſee Releaſeth to one, that is by Title, and where he makes a Releaſe to one who is without Title? *ibid.*

(17.) The Grantee of a Rent Charge releaſeth to one, that is Seiſed of the Lands, (in the Right of his Wife) and to his Heirs, whether this Releaſe ſhall come to the Husband and his Heirs? 121

(18.) Whether the Defeaſance of a Releaſe upon Condition ought to be mentioned in the Deed of Releaſe, or contained in another Deed, Signed, Sealed and delivered at the ſame time, with the ſame Deed of Releaſe? *ibid.*

(19. Seven Joyntenants be, and four of them Releaſe to three, and one of the three releaſes to two, whether theſe be good Releaſes? 122

(20.) Tenant for Life, Remainder in Tail, the Remainder to *W.* for Life, the Remainder over in Fee, to Tenant for Life, whether this laſt Remainder man can transfer the Fee by his Releaſe? *ibid.*

Seventhly

Seventhly, *To Confirmations.*

(1.) A Leaſe is made for two years, and the Leſſor doth confirm the Eſtate of the Leſſee for 20 years, whether this be a good Confirmation for 20 years? 127.

(2.) Whether the Confirmation of the Dean, and Chapter, made to confirm the Leaſes granted by the Biſhop, requires any delivery of the Deed *ibid.*

(3.) Whether the confirmation of the Leſſor to the Aſſignee of part of the Land, ſhall extinguiſh the Rent of the whole? *ibid.*

(4.) A prebendary of a Church Cathedral grants a Leaſe for years of parcel of his Prebend, and the Dean and Chapter confirms the Eſtate, whether this ſhall bind the Succeſſor, with the aſſent of the Biſhop? 128.

(5.) The King ſeiſed of a Mannor with the Advowſon appendant, granted the Mannor to *J. S.* for life, and then granted the Mannor to *J. D.* after the death of *J. S. Habendum una cum Advocatione*; and then in Parliament, reciting both the Grants, confirmed them by Parliament, whether the Advowſon paſſed? 128

(6.) Lands are let to *J. S.* for life, who lets the ſame Lands to *J. N.* for forty years, by virtue whereof he is in poſſeſſion, the Leſſor confirms the Eſtate of *J. N.* and then *J. S.* dies, whether the Leſſor can enter into the Land, during the Term? 129

(7.) Whether words can amount to a Grant, and a Confirmation of one, and the ſame thing? *ibid.*

(8.) A Confirmation to Tenant for life, and to him in Remainder for life, to have to them, and their Heirs, how it ſhall Enure? 130

(9.) Where a Confirmation to the Grantee for life, of a Rent, ſhall be good by way of Enlargement, and where not? *ibid.*

(10.) *A.* is diſſeiſed, and after confirms the Eſtate of the Diſſeiſor, whether the Diſſeiſor has a good Eſtate in Fee

Fee Simple, without any mention made of the word Heirs? 131.

(11.) Whether a Leaſe made by a Biſhop, before Conſecration, and confirmed by the Dean, and Chapter, be good to bind his ſucceſſor? 131.

(12.) Whether a Signiory in ancient demeſne can be changed by a Confirmation into Frank Fee? 123

(13.) Whether a Confirmation can be good in Law, that is made by a Confimator before a Title accrued to him, 133.

Eighthly, *To Attornments.*

(1.) A Signiory granted to *I. S.* for Life, by Deed, with a Remainder over in Fee, before any Attornment; *I. S.* Tenant for Life dies, the Tenant Attorneth to the Remainder man, whether this be a good Attornment, as to make the Remainder Effectual? 139

(2.) A Leaſe is granted to *I. N.* for 40 years, and after another Leaſe to *I. S.* *Habendum* from the end of the firſt Term, for 20 years, whether Attornment be requiſite in this Caſe? *ibid.*

(3.) *I. S.* Seiſed of a Rent in Fee, grants it to *I. N.* in Fee, and before any Attornment, the Grantor dies, the Tenant paying the Rent to the Grantee, whether this be a good grant in Law, there being no Attornment, made in the Life of the Grantor? 140

(4.) A Leaſe is made for Life, and then a Grant is paſſed of the Reverſion to *I. S.* and the ſame Reverſion is alſo granted to *I. N.* the Tenant attorneth to both of the Grantees, whether the Grants be good or not? *ibid.*

(5.) A Leaſe for Life, and a Grant of the Reverſion for Term of years, to commence after, whether any Attornment be requiſite? *ibid.*

(6.) A Feoffment is made in Fee of a Manor, to which an Advowſon is Appendant, and Livery is made in the demeſne, but no Attornment in the Caſe, what ſhall paſs 141

(7.)

(7.) Grantee of a Manor, before Attornment, grants the Advowſon, and then Attornment is made, whether this Grant be good? *ibid.*

(8.) Where the Law creates an Eſtate whether there Attornment be neceſſary? 142

(9.) Upon a Leaſe of a Reverſion whether Attornment be neceſſary? *ibid.*

(10.) A Copiholder Surrenders his Reverſion, whether there needs any Attornment? *ibid.*

(11.) Whether a Reverſion of a Term for years, granted for a valuable Conſideration, can paſs by the Statute of uſes, without Attornment? 143

(12.) What Advantages the Conuſee of a Fine may take before Attornment, and what not? *ibid.*

Ninthly, *To Surrenders.*

(1.) A Leaſe is made for Life, with a Rent; Tenant for Life grants his Intereſt to his Leſſor, and to others, whether this be a Surrender for part, or not? 150

(2.) A Feoffment is made to two, *Habendum* to them, and the Heirs of one of them, whether he that has the Freehold can Surrender to the other? *ibid.*

(3.) Tenant for Life the Remainder to *W.* for Life, grants his Eſtate to him in Remainder, for the Term of the Life of *I. S.* whether it be a Surrender, or not? 151

(4.) Land is given to Baron and Feme, the Remainder to *I.* N. the Baron makes a Diſcontinuance, and takes back an Eſtate to him and his Wife, the Remainder to *I. S.* and dies, the Wife claims in, by the ſecond Eſtate, and Surrenders part to *I. S.* whether this Gift be Surrendered to *I. S.* the Second Remainder man? *ibid.*

(5.) Tenant in Dower grants the Land to the Reverſioner by Deed, by the word *Dedi*, *Conceſſi* and *Confirmavi* for her Life, Rendring Rent, and for default of payment a Re-entry; an Aſſiſe was brought by the Tenant in Dower againſt

gainſt the Reverſioner of the Land, he pleads the Deed, whereby ſhe had ratified and confirmed the Land to him in Reverſion, *Habendum* for the life of Tenant in Dower, rendring 5 *l*, Rent, which he was ready to pay, but refuſing to uſe the Deed, as a Grant, claimeth it as a Surrender, whether it ſhall be taken as a Grant, or as a Surrender? 152

(6.) If a man Surrenders his Leaſe for a leſſer Term, whether his former Leaſe be Surrendered, or not? *ibid.*

(7.) Whether a diſcontinuance can be made by a Surrender, made to him in Reverſion? *ibid.*

(8.) Whether the Acceptance of a Leaſe for years, can be a Surrender of an Eſtate for Life? 153

(9.) Tenant in Socage made a Leaſe for four years, and died, his Heir within the Age of eight years, the Mother being Guardian in Socage, Leaſed by Indenture to the ſame Leſſee for 14 years, whether the firſt Leaſe be Surrendered or not? *ibid.*

(10.) Tenant for Life grants his Intereſt to the Leſſor, whether this ſhall enure as a Surrender, or a Grant? *ibid.*

(11.) Whether one Tenant for years can Surrender to another Tenant for years? *ibid.*

(12.) Whether by the Husband's acceptance of a new Leaſe, the Term which the Wife had to anothers uſe ſhall be deemed a Surrender? 154

(13.) A Surrender made by the Husband, to Leſſee for years in the right of his Wifes Eſtate, whether good? *ibid.*

(14.) A man Leaſeth Land for 60 years, the Leſſee makes a Leaſe of part of the Term to the Leſſor, Rendring a Rent, and then the Leſſee makes a Surrender to his Leſſor, whether the Second Rent be extinguiſhed? 155

(15.) A Leaſe to *B.* for Life, Remainder to *C.* in Tail, *B.* infeoffs *C.* and his Wife in Fee, *C.* dies without Iſſue, *W.* enters for a Forfeiture, whether the Entry

try of *W.* be Lawful, or not? *ibid.*

(16.) Whether there be any difference betwixt a Surrender, and Reſignation, and what that may be? *ibid.*

Tenthly, *To Bargains and Sales.*

(1.) WHether upon a Bargain and Sale an uſe can be raiſed out of an uſe? 162

(2.) Whether in pleading a Bargain and Sale, it be neceſſary to ſhew in what Court it was inrolled? *ibid.*

(3.) A Bargain, and Sale without Enrolment, how it ſhall Enure? 163

(4.) How a Bargain and Sale ſhall Commence, and when it ſhall be enrolled, according to the Statute of 27 *H.* 8. *c.* 16. *ibid.*

(5.) Bargain and Sale by deed indented, made to *J. S.* and before Enrolment a Bargin and Sale is made to another, the later firſt enrolled, and then the former is ſo too, within the ſix months, whether the Enrolment of the firſt deeds be good, or not? *ibid.*

(6.) What Leaſe is capable of a releaſe to make a Bargain and Sale? 164

(7.) *A.* ſeiſed of a Rent charge in Fee, the Rent being Arrear, by Indenture of Bargain and Sale, duly enrolled, grants the ſaid Rent, and Arrears thereof to *B.* whether this be a good Grant for the Rent and Arrears? *ibid.*

(8.) Whether the Enrolment of a Bargain and Sale, ought to be within ſix Months of the date, and not of the delivery? 165

(9.) Two Jointenants ſeiſed *per my & per tout* one of them by deed, doth Bargain and Sell, *Totum Statum Suum*, the other dies, before the Enrolment, whether a Moiety only paſſes or not? *ibid.*

(10.) Two Jointenants be, and one of them Bargains and Sells the land by deed indented, and dies before Enrolment, whether his Fellow ſhall have it by Survivorſhip? 166

(11.) A Bargain and Sale is made with a Letter of

of Attorney to make Livery of Seisin, and before Enrolment the Livery is executed, whether the Grant shall take Effect by the Livery or Enrolment? *ibid.*

(12.) Whether a Bargain and Sale for divers Causes, and Considerations can be good in Law, without a sum of Money? *ibid.*

(13.) Lessee for the life of another, Bargains and Sells by deed indented, and enrolled, and afterwards levies a Fine to the Conusee, *sur Conusance de droit come ceo*, &c. Whether this be a Forfeiture of the Bargainees Estate? 167

(14.) Whether Land shall pass from the Bargainor to the Bargainee, the Bargainor having not at the time of the Bargain and Sale, made any Estate or Interest therein to contract for it? *ibid.*

(15.) Land given in Tail to *A.* the Remainder in Fee to his Sisters, being his Heirs at the Common-Law. *A.* made a deed in this manner, *viz.* I the said *A.* have given, granted, and confirmed, for a certain piece of Money, *&c.* without the words Bargained and Sold, and the *Habendum* was to the Feoffee with warranty against *A.* and his Heirs, and a Letter of Attorny was to make Livery and Seisin, and the deed was in this Wise, *To all Christian People*, &c. and the Deed was enrolled within a Month, after the making of it; and the deed was indented, altho' the words of the deed were in the Form of a deed Poll; and four Months after the delivery of the deed, the Attorny made Livery of Seisin. *A.* died without Issue, and the Sisters entered, and the Feoffee ousted them, whereupon they brought an Action of Trespass, whether this Conveyance shall Enure by way of Bargain and Sale, or of Feoffment? 168

Eleventhly, *To Devises.*

(1.) DEvise of Lands to *J. S.* for life, Remainder to his Heirs Males, and to their Heirs Males of their Bodies; the Devi-

Deviſor dies, *J. S.* has iſſue a daughter, who has iſſue a Son, and *J. S.* dies, whether the Son of the daughter ſhall inherit? 178

(2.) Whether Survivorſhip can take place in Deviſes? *ibid.*

(3.) *A.* Tenant for life, Remainder over in Fee, Tenant for life refuſeth to take by the deviſe, whether he in the Remainder after the death of *A.* may lawfully enter? *ibid.*

(4.) Whether a perſon can take an Eſtate for life by Implication? 179

(5.) A deviſe of land to a man by ſuch words, *&c.* To him and to his, or by ſuch words, *&c.* To him to do his Will therewith, whether the Deviſee can rightly claim a Fee Simple in the ſaid land? *ibid.*

(6.) A man make his Will, and willeth, That his Executors ſhall ſell his land, or that if a man by his Will deviſethhis land to his Executors to be ſold, and dies, one of the Executors refuſes the Adminiſtration of the Goods of the ſame Teſtator, before the Ordinary, whether the other Executor can ſell this ſame land to the refuſing Executor? 180

(7.) A Deviſe is to *J. S.* of Lands holden in Socage by theſe words, *I releaſe all my Lands to* J. S. *and his Heirs*, whether *J. S.* has a Fee-ſimple in theſe Lands? 180

(8.) A Deviſe of Lands to his two Sons to be equally divided between them, whether they be Jointenants or no? *ibid.*

(9.) Lands holden in Socage, are deviſed to *J. S.* to perform his laſt Will and Teſtament, and to pay his Debts and Legacies, whether by this Deviſe *J. S.* upon performance of the things aforeſaid hath a Fee-ſimple in the Lands? 181

(10.) Whether in a Will Acres of Meadow ſome Miles diſtant from a Meſſuage will paſs by the words *Appurtenances*? *ibid.*

(11.) A Deviſe to five Men, their Heir and Aſſigns, all of them to have par tand part like, the one to have as much as the other, whether they be Jointenants or Tenants in Common? 182

(12.) By a Deviſe of Lands, Meadows and Paſtures, whether a Houſe paſſes? *ibid.*

(13.) What paſſes by this word [*Livelyhood*] in a Will, according to the Cuſtom of *London*? 183

(14.) A Man having two Daughters, his Heirs doth deviſe his Land to them in Fee; what Eſtate have they by this *Deviſe*? 183

(15.) *L.* ſeiſed of Lands in Fee, deviſeth it to two perſons equally and to their Heirs, whether this makes them Jointenants or Tenants in Common? 184

(16.) A Man deviſes his Land to his Wife, during her life, Remainder over *Exitui ſuo*, and he has a Son and a *D*aughter, and dies ſeiſed, whether a Daughter ſhall take any part of the Land? *ibid.*

(17.) A Deviſe to ſell Lands without naming who ſhall ſell them, whether the *D*eviſe be void or not? 185

(18.) A Deviſe of a Remainder *proximo de ſanguine* of the Deviſor, and at the time of the falling of it, are two Daughters, whether one or both ſhall have it? *ibid.*

(19.) By a Deviſe of the reſt of my Lands, what paſſes? *ibid.*

(20.) A power reſerved to *D.* to revoke a Deed by writing, ſubſcribed and ſealed by him in the preſence of two or more credible Witneſſes in expreſs words, *&c. D.* makes his Will in writing in the preſence of two credible witneſſes without making an expreſs Revocation, whether this be a a good Revocation? 186

(21.) Lands are granted to two Men, and the Heirs of one of them, whether the Reverſion be deviſable? *ibid.*

(22.) *I give all to my Mother, all to my Mother*, whether Lands can paſs by theſe words? 186

(23.) *T.* and two others were Tenants in Common of a Manor; *T.* makes his Will in writing of his third part, and then by Indenture and Fine, Partition is made between theſe Tenants in Common; whether this partition be a Revocation of the Will? 187

(24.)

(24.) A Curate uncapable of taking an Eſtate in Succeſſion, for want of being Incorporate, whether the Heir of the Deviſee ſhall hold the Eſtate in Truſt for the Curate for the time being? *ibid.*

(25.) Lands were deviſed to two Daughters, equally to be divided, and to the ſurvivor of them, whether this be an Eſtate of Joyntenancy, or Tenancy in Common? 188

(26.) A man deviſeth by his Teſtament to his Daughter *Jane*, *Totam terram Suam* in *Dale*, *Habendum Sibi, & hæredibus de Corpore ſuo Legitime procreatis*; and by the ſame Will he deviſes to *Anne* his Daughter, *Totam terram ſuam in tenura I. S.* in the County of *Hartford*; wherein *Truth Dale* was in the County of *Hartford*, and Parcell of theſe Lands were in the Tenure of *I. S.* whethere *Jane* ſhall have the Lands in *Dale* in the Tenure of *I. S.* by the firſt words, or ſhall have them by the laſt words? *ibid.*

(27.) A man deviſeth to his 2 Sons paying his debts what Eſtate ſhall they have? *ibid.*

(28.) A man ſeiſed of Lands make a deviſe of them by his Teſtament to his Wife, to diſpoſe, and employ them, upon her ſelf and her Sons, at her Will and Pleaſure, what Eſtate has the Wife, or whether a Fee thereby? 189

(29.) A man deviſeth his Lands to his Wife, *de anno in annum*, until *John* his Son ſhall come to the Age of 20 years, and dies, the Wife enters; *John* the Son dies before he comes to the Age of 20 years, whether the Intereſt of the Wife, be determined by the death of the Son, before 20 years? *ib.*

(30.) A man deviſes his Lands to his Eldeſt Son in Tail, and that the Executors ſhall take the Rents of the Lands to the intent to find him, and his yonger Brother at Schooll, till they come to full Age, whether the Executors had an Intereſt in the Lands till the full age of the Deviſee? 190

(31.) The Father ſeiſed of Lands, is bound in an Obligation, and deviſeth his

Land to his Wife, until his Son ſhall come to the Age of 21 years, the Remainder to the Son in Fee, and other Lands deſcend to the Son ſtom his Father, whether the Heir in this Caſe ſhall be at his Election to waive the deviſe, and take by deſcent, or *e contra*? 191

(32.) A deviſe of ſeveral parcells of Land to ſeveral perſons, and the ſurvivors to be each others Heir, what Eſtate paſſes? 191

(33.) A man ſeiſed of a Mannor, parcel in Demeſn, and parcel in ſervice, deviſeth by his Teſtament to his Wife, during her Life, the Demeſin Land, and alſo by the ſame Will deviſes unto her all the Service of the chief Rents for 15 years, and further by the Teſtament, he deviſeth the Mannor to another, after his wife's death, whether this deviſe can take effect for any part of the Mannor as to the Stranger, until the wife's deceaſe? 192

(34.) In a Replevin the Caſe was, *L. W.* being ſeiſed of Lands in Fee, by his Will did deviſe all his Lands, and Tenements to *A. W.* and his Heirs, and before his death, made a deed of Feoffment of the ſame Lands, and when he ſealed the Feoffment, he asked if this Feoffment will hurt this laſt Will, and if it will not, I will ſeal it, and then ſealed, it and made a Letter of Attorney to make Livery in any of the ſaid lands; the Attorney made Livery, but not of the lands, which were in Queſtion, and then the Teſtator died, and the Queſtion was, whether the deviſee, or the Heir of the deviſor ſhould have the land? 192

(35.) A man deviſed his land to his wife for fear, and becauſe he was in doubt, whether he ſhould have iſſue, or no, he further willed by his will, That if he ſhould not have any iſſue by his wife, that then after the death of his wife, the lands ſhould be ſold, and the mony thereof coming, diſtributed to three of his Blood, and made his wife, and another his Executors; the Execntors after his death proved the Will, the other Exe-

Executor died, and the wife ſold the lands, whether the ſale good, or not? 123

(36.) Whether general words compriſed in a Will, can inlarge ſpecial words before in it? 194

(37.) A Deviſe of all my Lands in *A.* whether it paſſes Lands afterwards purchaſed there, if I declare it to a Stranger that they ſhall go as the reſt? *ibid.*

(38.) A *Deviſe* of Lands in poſſeſſion and in Reverſion upon an Eſtate for life to three Executors to ſell, to pay debts, one Executor dies, Tenant for life dies, Sale by the Survivors, whether good, or not? 195

(39.) A deviſe of Lands in *A.* (the ſame being in *A.* and *B.*) to his yongeſt Son in Fee, and if he die without Iſſue, his Wife to have the Lands, whether ſhe ſhall have only the Lands in *A*? 196

(40.) A deviſe of a houſe with the Appurtenances, the Houſe being Copihold, the Lands Freehold whether the Land, tho' uſed with the Houſe, ſhall paſs? 197

(41.) A deviſe to one, and to the Heirs Females of his Body begotten, the deviſee hath a Son and *D*aughter, and dies, whether the *D*aughter ſhall enjoy the Land? 198

The Queſtions handled in the Firſt Part are, 373.

The Queſtions handled in the Second Part are, 250.

In all, 623.

FINIS.

FH
MVSEVM
BRITANNICVM